

STATE OF THE COAL INDUSTRY IN OKLAHOMA

HEARING
BEFORE THE
SUBCOMMITTEE ON
NATURAL RESOURCES DEVELOPMENT AND
PRODUCTION
OF THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
NINETY-NINTH CONGRESS
FIRST SESSION
ON THE
STATE OF THE COAL INDUSTRY IN OKLAHOMA WITH EMPHASIS ON
THE IMPACT OF FEDERAL REGULATIONS

MUSKOGEE, OK, JUNE 14, 1985



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STATE OF THE COAL INDUSTRY IN OKLAHOMA

FRIDAY, JUNE 14, 1985

U.S. SENATE,
SUBCOMMITTEE ON NATURAL RESOURCES
DEVELOPMENT AND PRODUCTION,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Muskogee, OK.

The subcommittee met at 1:30 p.m. at the Civic Assembly Center, Muskogee, OK, Hon. Don Nickles, presiding.

Present: Senator Nickles.

Also present: Robert L. Terrell, professional staff member; Ellen Rowan, staff assistant; and William B. Conway, counsel for the minority.

OPENING STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. The Subcommittee on Natural Resources Development and Production will come to order.

Good afternoon. Today the Subcommittee on Natural Resources Development and Production will focus on the state of the coal industry here in Oklahoma with special emphasis on the impact of Federal regulations.

Oklahoma and I think everyone in this room would agree needs a strong and viable coal industry. This industry is a vital component in Oklahoma's economy, providing good jobs and economic stability to thousands of Oklahomans.

Unfortunately, you and I know that these are troubled times for our coal industry. Not only is the industry suffering from foreign coal imports, the strong dollar, high production costs, and high rail rates, but also in Oklahoma we have the double burden of being under attack from Federal regulators.

I think it is time for the State of Oklahoma to be in charge of regulating its own coal industry. In the past there was little question that the State of Oklahoma did a poor job of mine regulation. The Surface Mining Control and Reclamation Act of 1977 mandated that the States set up regulatory procedures to comply with the act and that the Federal Government through the Office of Surface Mining would take control if the States failed to comply.

To me its an embarrassing situation for the State of Oklahoma to be one of two States in the Union in which the Federal Government has taken over regulation of our coal mines. I believe that the State of Oklahoma should regulate its coal mines—and regulate them well—with fairness and also with common sense.

We have many important national policy objectives, such as cleaning up our air and water; reclaiming lands disturbed through mining; protecting the health and safety of our coal miners; protecting rare and endangered plant and wildlife species, and also for the need for energy independence.

In view of the way things are going on here in Oklahoma, I am inclined to suggest that the Oklahoma coal producers should be listed as an endangered species as well. I think it is possible and I believe it is also necessary to balance our other national objectives with the need for an active and productive coal industry.

We have a variety of expert witnesses here today to testify on all aspects of the Oklahoma coal industry. Their testimony will be very valuable in helping to determine how best to help our coal industry in Oklahoma.

I am also very concerned about reports that I have received and even noticed in various news accounts and from a variety of individuals who say that some witnesses have been threatened by Federal officials because of this hearing. I don't know without a doubt whether these threats have been made, but if so, I should make it clear to everyone that this is against the law and will not be tolerated in any form or fashion by this Senator or the Committee.

Today, I am accompanied by the members of the professional staff of the Energy and Natural Resources Committee. Sitting on my right is Mr. Bob Terrell, professional staff member. Mrs. Ellen Rowan, on my far left is staff assistant to Mr. Terrell, and Mr. Bill Conway on my immediate left is counsel for the minority. We also have with us, I believe, Mr. Larry Beard, who is the Federal marshal, and Ms. Ann Campbell who is the deputy marshal and Ms. Sharon Keisler of my Tulsa staff who covers this area.

Again, I want to thank everyone for your interest today. I think that this is an important hearing and I hope we will be able to make some progress and not only learn the facts but also do some positive things to help the coal industry in the State of Oklahoma.

I have a couple of statements that I wish to enter into the record following my statement. One is a statement by the Chamber of Commerce here in Muskogee and also the county port authority here. I will just summarize a portion of one of these statements. It says: "We encourage one clearly defined and fair set of rules for everyone to follow, reasonably controlled at the State level". I would certainly echo that comment. I also have a statement we will enter into the record from the Tulsa Port of Catoosa.

[The material referred to follows:]

The following is a statement of concern from the Greater Muskogee Area Chamber of Commerce and the Muskogee City/County Port Authority.

Since coal is an important energy industry to the Muskogee area and this industry has been economically hard pressed over the past year, and since coal is the principle commodity in the local waterway transportation industry which is also economically depressed, and since insured unemployment for Muskogee county was at 11.7% in February of 1985 the Muskogee area cannot afford to lose any jobs or industries that would have an additional adverse effect on our economy.

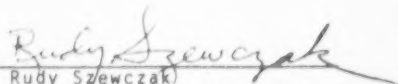
In addition to this, we feel that overregulation should never cause the economic depression of an industry vital to the future of our area, state and country. Safety, both now and in the future should be everyone's concern. However, environmentalists, experts, and business leaders ~~arbitrate~~ ^{arbitrate} the overall needs of the local community.

Governments should balance their recommendations along with the needs of industry and the community. Dual regulations, enforcements and guidelines only confuse the issue and impede progress.

We encourage one, clearly defined and fair set of rules for everyone to follow, reasonably controlled at the state level.



Cliff Twaddle
Superintendent
Port of Muskogee



Rudy Szewczak
Executive Vice President
Muskogee Chamber of Commerce

TULSA PORT Of CATOOSA

HEAD OF NAVIGATION FOR THE ARKANSAS VALLEY

ROBERT W. PORTISS, F. I. D.

Port Director

W. H. THOMAS

Director of
Operations

June 13, 1985

JOHN A. REED, F. I. D.

Manager of Marketing

MYRLE M. HORTON

Port Accountant

The Honorable Don Nickles
Senate Committee on Energy and
Natural Resources
For Public Hearing on June 14, 1985
Muskogee, Oklahoma

Dear Senator Nickles:

I am very concerned about the drastic decline in coal production and corresponding export barge shipments of coal out of Oklahoma. Coal has historically been the largest single commodity to be shipped on our waterway representing approximately 31 percent of the total outbound barge shipments. We are currently seeing about a 37 percent decrease in barge load shipments of coal. Reductions of this magnitude result in significantly higher inbound barge transportation costs due to more numerous one way empty barge hauls.

Reportedly, the problem with coal production, in part, resides with certain alleged conflicts between the inspectors employed with the federal Office of Surface Mining (OSM) and the coal miners. Their relationship is further complicated due to alleged conflicts between OSM and the Oklahoma Department of Mines that reportedly is inadequately staffed due to not having a State Mine Inspector.

Other problems more easily understood include the very high value of the U. S. Dollar and to certain U. S. policy problems that, if changed, might precipitate additional export shipments of coal. As an example, serious consideration should be given to allowing crude oil to be shipped directly to Japan from Alaska. Japan, in turn, may be willing to purchase additional U. S. coal supplies.

Regardless of where the truth may lie, I respectfully call on your distinguished committee members to please employ the necessary resources to determine the solution to this very serious coal production and related barge export problem.

Sincerely,

Robert W. Portiss

Robert W. Portiss
Port Director

RWP:cjs

Senator NICKLES. I should mention as well that I have discussed this hearing with Senator Boren. He wishes that he could be here but unfortunately he is in Oklahoma City conducting a hearing at the same time today, so I am not able to join his hearing nor he mine. But I can tell you we share a mutual concern in trying to stimulate the health of the coal industry in the State of Oklahoma.

We will now proceed with the first panel. Will they please come forward and join us. We have Jed Christensen, who is acting Director of the Office of Surface Mining from Washington, DC. Accompanying Mr. Christensen is Carl Close. Also we have Gayle Townley, director of the Oklahoma Department of Mines. Ms. Townley will be accompanied by Michael Wright of Scientific Social Research in Norman, OK. Would you all please come forward.

I am going to ask all our panelists if they could please try to summarize their remarks as much as possible as this will allow more time for discussions and questions. Specifically, I would ask all our panelists to keep their remarks within 8 minutes.

Mr. Christensen.

STATEMENT OF JED CHRISTENSEN, ACTING DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CARL CLOSE, ACTING ASSISTANT DIRECTOR

Mr. CHRISTENSEN. Mr. Chairman, thank you for this opportunity to come here to Muskogee and address your subcommittee hearing here today.

First of all I would like to suggest there were accounts in the papers that there had been threats by Federal employees against people who potentially might want to testify here. If that is the case, I would very much like to know who those people are. We will take appropriate disciplinary action because that is something we don't agree with either.

Senator NICKLES. Jed, would you turn that microphone up a little more level. That will be better.

Mr. CHRISTENSEN. First of all I would like to say that I would like to present my full testimony for the record. It is fairly lengthy and it goes into quite a bit of history with the relationship between OSM and the State department of mining. I would like to submit that and it is available over at the side table for anybody to have a copy of.

Senator NICKLES. Thank you very much. I appreciate you doing that.

Mr. CHRISTENSEN. Thank you. I will try to do this as briefly as I can. First of all I appreciate the opportunity we have to talk to you at these hearings about how the Federal Government, particularly the Office of Surface Mining, recognizes that the primary roles of the States in the federal system is critical.

Also part of the law of SMCRA itself talks about making sure that States take over their portion of the law and that we serve in an oversight capacity. We agree with that wholeheartedly.

I would like to also make it very clear at the onset of my testimony that we are very concerned and willing that Oklahoma will run its own regulatory program. We want Oklahoma to regain full pri-

macy and we are working actively toward that. To be able to do that we have to establish good relationships with the State regulatory authorities and also the Governor and his people. That is what we are trying to do as quickly as we can. We believe we do have a good relationship there.

Another concern I think people have expressed that we are trying to establish a Federal foothold in Muskogee by establishing a local office here. That could not be further from the truth. Our local inspectors are here simply as a temporary measure. They are working with the State in inspections and enforcement work and as soon as certain deficiencies in the State program are resolved those people will be pulled out of Muskogee.

We believe that the State of Oklahoma has made excellent progress in the last year toward taking over their complete program.

I would like to have people understand here that the increased Federal presence in the Muskogee office is temporary as I have stated and that our attitude is basically that OSM is definitely pro environment as they are also pro coal.

I don't want to dwell too long on those perceptions or misperceptions but from my point of view the State and the Federal Government—OSM—spent many hours and had many hearings here in Muskogee and other places in the State before taking back part of Oklahoma's program. It was finally decided that rather than take over the entire program, that the Federal Government would come in and take a portion of it back, thus allowing the State to husband their resources in an area where they would better perform their duties and at such times that they felt comfortable taking over their program and we felt comfortable, we would give the entire program back to them.

Some people were concerned about the length of time its taken to resolve certain impediments for the State to take over the program. I believe that when we look at all the details on how long it takes for any body of government, for instance in the State here, to go back to the legislature and get additional resources, it is important that they have a program to follow and that does take time to develop. As a result of that, however, it is my understanding that the Department of Mines has taken the initiative and are adding new positions to their staff. They have allocated more funding for their staff and they are filling their vacancies with qualified people which is critical to this program.

I might make you aware that there are several things that the State has to do to regain full primacy and they are actively doing that. One is, they need to revise or they need to submit to OSM for review a revised inspection and enforcement plan and a permitting plan. Both of those have been submitted to OSM and we are actively looking at those right now and reviewing them. We will be making comments back to the State and shortly we will have a 30 day public comment period for people to be able to comment on those plans.

One other thing that we have done, which I think is important to let the State know how seriously we are in making sure they regain primacy, is to have a Deputy Assistant Director for Program Operations and Inspections who works out of Denver allocate a

major portion of his time to the State officials in Oklahoma to work with them to regain primacy in whatever effort that takes and Ray Lowrie is with us here today listening to these hearings. We also have several highly experienced technical staff people from Denver who are located in Oklahoma City helping the State look at their permitting functions and having training sessions with them. Senator, I am very positive about Oklahoma's future and their capability to run their regulatory program on their own. I believe we can and must resolve any of these issues that are before us so the State can get on with their job of mining coal to remain competitive in the market while at the same time reclaiming the land precisely as Congress and the law intended.

I have Carl Close, acting Assistant Director, here with me today from Washington to answer specific questions people might have. I appreciate very much the opportunity to talk to you today. Thank you.

[The prepared statement of Mr. Christensen follows:]

Statement of Jed Christensen
Acting Director
Office of Surface Mining Reclamation and Enforcement
before the
Subcommittee on Natural Resources Development and Production
Senate Committee on Energy and Natural Resources
June 14, 1985

Opening Remarks

Mr. Chairman, thank you for this opportunity to review the operations of the Interior Department's surface mining program as it applies to the coalfields of the State of Oklahoma. This is an important subject. I commend the Subcommittee and you, Mr. Chairman, for your interest in this program and for the cooperation extended to me and to the Office of Surface Mining as we review State and Federal activities under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The purposes of SMCRA are to protect society and the environment from the adverse effects of present-day surface coal mining operations, plus repair of past environmental damage from coal mining done before the law went into effect.

The Federal surface mining program recognizes the importance of coal as an energy fuel, at the same time recognizing that there can be a significant environmental impact from the industrial operations required to produce the coal. To minimize and control those impacts, SMCRA provides a national oversight program to provide regulatory consistency while States develop and implement their own regulatory programs designed

to meet their own State needs. States are not required to institute their own regulatory programs. If they choose, they can leave that task in Federal hands. However, there are positive incentives for State primacy under SICRA, not only to tailor the workings of the program to the unique conditions within the State, but also to have more control and funding for the environmental repair feature of SICRA. The so-called "Title Four" program provides funds from coal production taxes of 35 cents per ton of surface-mined coal and 15 cents for underground-mined coal which are used to restore lands that were mined and abandoned prior to enactment of the 1977 surface mining law.

Like most other coal States, Oklahoma chose to handle the regulatory program through primacy under SICRA, meaning that State laws and regulations, consistent with SICRA, would apply to coal mines within Oklahoma's borders and that State inspectors and State enforcement mechanisms would be used to see that those laws and regulations are carried out. Under State primacy, the Federal oversight role acts to make sure the State laws and regulations mesh with the provisions of SICRA as required by the Act, that the State enforcement resources are adequate for the task, and that the State program itself is working as intended. Where Federal oversight finds that corrections or improvements are needed, those needs are communicated to the State for action within reasonable time limits.

I will briefly describe a chronology of events relating to the approved Oklahoma program followed by a summary of Federal and State actions taken to date and then a brief discussion of the future.

History of Oklahoma Priority

On January 16, 1981, the Secretary of the Interior conditionally approved Oklahoma's program to administer and enforce the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This approval was granted with the understanding that implementation of the permanent program would begin with the lifting of a State court injunction issued on January 9, 1981. The injunction barred the State from enforcing the permanent program and ordered the State to continue enforcement of initial regulatory (interim) program standards.

On February 12, 1981, the Oklahoma Legislature rescinded the State's permanent program regulations. On July 20, 1981, the Oklahoma County District Court lifted the injunction which barred the Oklahoma Department of Mines (ODM) from implementing its program and dismissed the case on the grounds that, as a result of the action of the State legislature, the suit became moot.

On September 10, 1981, the Director, ODM, notified ODM that he had reason to believe that the State may not be able to implement, administer, maintain, or enforce its approved program due to the lack of regulatory provisions. An informal conference with ODM officials was held October 14, 1981. Based on the information received at the informal conference, the Director still had reason to believe that Oklahoma may have been unable to implement, administer, maintain, or enforce its program.

On November 19, 1981, a public hearing was held in Muskogee, Oklahoma to discuss the status of Oklahoma's program.

On December 14, 1981, Oklahoma approved a set of emergency regulations under an emergency rulemaking provision of the State's Administrative Procedures Act. On January 22, 1982, OSM submitted permanent regulations to OSM as an amendment to its approved program. A public hearing on the adequacy of the proposed amendment was held March 16, 1982, in Muskogee, Oklahoma.

On April 2, 1982, the Director, OSM found that the regulations contained in the program amendment provided Oklahoma with adequate guidance and authority to regulate the State's surface coal mining and exploration activities. The Director also found that, with the approval of the permanent program regulation amendment, Oklahoma would be capable of implementing, administering, maintaining, and enforcing its approved program. Based on the above findings, the Director terminated the 30 CFR Part 733 proceedings initiated September 10, 1981.

On March 10, 1983, the Director, OSM sent a second notification to the Governor of Oklahoma stating that he had reason to believe that the OSM may not be implementing adequately its approved program to regulate surface coal mining and reclamation operations. The Director cited problems in Oklahoma's program implementation in several areas including the designation of lands unsuitable for mining, permitting, inspection and enforcement, administrative procedures and recordkeeping and Oklahoma's inability to meet the Secretary's conditions on his approval of the program.

On April 14, 1983, OSM responded to the Director's March 10, 1983, letter by providing written information regarding OSM's concerns.

On April 17, 1983, OIM requested an informal conference with OSI under the provisions of the Federal regulations. The Director agreed to Oklahoma's request, notified the public and held an informal conference with OIM officials on June 15, 1983, in Oklahoma City.

At the informal conference, OSI requested that OIM provide additional information on many of OSI's concerns. OIM submitted additional written information on several occasions from July through November.

Several meetings were held between OSI and OIM to discuss OSI's concerns and the State's progress in resolving issues.

On November 17, 1983, the Director announced in the Federal Register that he still had reason to believe that Oklahoma may not be adequately implementing its approved program and scheduled a public hearing and public comment period.

The Director's decision to hold a public hearing and solicit public comments were based on unresolved concerns in the following areas: permitting, State actions on petitions to designate lands as unsuitable for surface coal mining, inspection and enforcement procedures, administrative procedures and records, and the Secretary's conditions of State program approval.

On December 21, 1983, OSI conducted a public hearing in Muskogee, Oklahoma on the status of Oklahoma's program. OSI not only solicited testimony from State officials at the hearing, but also requested specific information addressing OSI's concerns. A response date for

submission of the requested information was set for January 10, 1984, and subsequently extended to January 11, 1984. The public comment period, initially open through December 30, 1983 was extended through March 12, 1984. On January 11, 1984, OMI submitted additional information as requested.

During the period between December 21, 1983, and March 12, 1984, a substantial number of comments were received from the public. All written public comments have been made a part of the administrative record, as well as all other documents relating to the Oklahoma program received by OGI since July 20, 1981. On the basis of the record described above the Director of OGI published in the Federal Register on April 12, 1984, his findings and decision concerning the status of the Oklahoma permanent regulatory program.

Based on his evaluation and findings, the Director determined that Oklahoma had made some progress addressing certain problems identified by OGI in the States implementation of its program. The Director believed the steps taken by OMI demonstrated the States intent in certain areas to administer its regulatory program as approved by the Secretary.

The Director also concluded that the reforms made by the State were not extensive or timely enough to ensure that mining operations in Oklahoma would be regulated in full compliance with SMCRA and the approved Oklahoma program.

So to ensure that the adverse effects of surface mining were controlled and that the Oklahoma permanent regulatory program was adequately administered, the Director, effective April 30, 1984, implemented direct Federal enforcement for the inspection and enforcement provisions of the approved State program.

OGI Inspection and Enforcement Actions

The Office of Surface Mining assumed full authority for inspection and enforcement responsibilities in Oklahoma. This action was taken for two reasons: 1) inspection and enforcement was the program area in which the most severe deficiencies existed; and 2) the action enabled OGI to reallocate its staff resources by having the mine inspectors assist the permitting staff in alleviating the backlog of permitting actions. To accomplish the OGI objectives of protecting the environment and assisting the State to administer its approved program, OGI took the following actions:

- o established an office in Muskogee;
- o initially staffed the office with individuals borrowed from other OGI offices, then later brought in individuals hired on a temporary basis; and hired an inspector supervisor for the Muskogee Office.

Effective April 30, 1984, OGI inspectors assumed authority for inspecting mine sites for compliance with the approved Oklahoma performance standards. Federal inspectors enforced the Oklahoma State program through procedures established in the Federal inspection and enforcement regulations, and cited all observed violations.

Since implementation of the Federal inspection and enforcement program in Oklahoma, OSM has issued 339 Notices of Violation and 136 Cessation Orders in the State.

OSM Actions to Assist Oklahoma in Regaining Full Authority

Other OSM actions intended to assist the State in resolving program deficiencies included the placement of a small technical staff from OSM's Western Technical Center in the Oklahoma City Office to assist OSM staff in permitting functions. OSM also conducted numerous training sessions on various topics for the staff of the Department of Mines.

In the last month, I have designated Ray Lowrie, Deputy Assistant Director for Program Operations and Inspection located in Denver, as OSM's liaison with Oklahoma. This action is aimed at increasing attention to and awareness of problems, issues and progress associated with the State's program. In addition, this action will improve communication between OSM and OSM. Mr. Lowrie has already met with Governor Nigh's Special Assistant for Natural Resources, and the Deputy Chief Mine Inspector of the Oklahoma Department of Mines.

I am encouraged to learn that the State hired a Federal coordinator to interface with an OGI counterpart who will be in place on June 17, 1985. They will be located in Oklahoma City and able to communicate and coordinate their respective agencies' activities on a daily basis.

I mention these actions to demonstrate OGI's commitment to State primacy.

State Actions

Just as OGI has taken positive corrective actions, so has the State of Oklahoma. Among these are the following:

- o hiring new program director;
- o adding new positions to OIM staffing ceiling;
- o allocating additional funds for OIM; and
- o filling vacancies with qualified staff.

OGI believes these actions are a major factor in the progress made to date, both the quantity and quality of OIM staff are improved.

The Department of Mines also has made progress in the administrative aspects of the permit application review process. Improvements in this area include: 1) development of a revised permit application with an instruction manual for use by the applicant; 2) development of a permit application tracking system; 3) improvement in the level and quality of application review; and 4) improvement in the written permit findings. The State is also demonstrating improvement in the area of bond calculation.

I find these improvements encouraging and hope this trend continues. The Oklahoma Department of Mines has made progress in resolving some of OGI's concerns; other areas of concern remain. However, I trust that with the Office of Surface Mining's assistance these too will be adequately resolved.

Resumption of Authority

As part of the remedial action requirements placed upon the State, the Director in his April 12, 1984 decision required the submission of two comprehensive plans by OIM. A revised plan describing the permitting process was due to OGI on October 30, 1984 and a detailed plan addressing the inspection and enforcement process was due on April 30, 1985. The State submitted both plans in November 1984. After review by OGI, a meeting was held on January 31 and February 1, 1985 to discuss problems and needed revisions. In early May 1985, OIM submitted a revised permitting plan which is currently being reviewed by OGI. On June 7, 1985, OIM submitted the revised inspection and enforcement plan.

In the very near future, OGI will open a 30 day public comment period and schedule a hearing in order to gather comments on the State's submissions. We will take all comments into consideration before making a decision concerning the status of the Oklahoma program.

Summary

The Oklahoma Department of Mines is making solid progress in several program areas with other program areas requiring further attention. The Office of Surface Mining looks forward to restoring full program authority to the State of Oklahoma as soon as the State demonstrates its capability and intent to consistently administer its approved permanent regulatory program. Let me restate, OSM does not intend to establish a permanent office in Muskogee. We would like to return primacy to Oklahoma at the earliest practical opportunity. However, I must make it clear to everyone that OSM will ensure that the State of Oklahoma can effectively administer its own regulatory program, before OSM returns full program authority.

Senator NICKLES. Thank you very much. Mr. Close, were you planning on making a statement?

Mr. CLOSE. No, sir.

Senator NICKLES. Ms. Townley.

STATEMENT OF GAYLE TOWNLEY, DIRECTOR, OKLAHOMA DEPARTMENT OF MINES, ACCOMPANIED BY MICHAEL WRIGHT, SCIENTIFIC SOCIAL RESEARCH

Ms. TOWNLEY. Thank you, Mr. Chairman.

The Oklahoma Department of Mines is a statutory agency which regulates mining in the State of Oklahoma, as you are aware. In 1980 the deputy position or the position of deputy chief mine inspector was created by the State legislature and I have held that position since March 1984, serving as the responsible State official. I also serve as the director of the Department of Mines by statute. This was 2 weeks prior to OSM's coming in to assist us with the State program. The State of Oklahoma was one of the first in the Nation to pass legislation and file the regulations to meet the requirements of the Federal Surface Mining Control and Reclamation Act of 1977.

Mr. Chairman, you were at the time serving in the State Senate and were instrumental in seeing that those laws were passed and we are very appreciative of the effort that you made during your time as the State senator. After that though the stormy times did ensue while OSM continuously updated and changed the Federal regulations and the Oklahoma coal operators questioned the actions of both the State government and the Federal Government agencies.

Then OSM proceeded to change and rewrite policies and guidelines to implement the enforcement of the new Federal law. Because Congress did not allow very much time for this to be done, which created quite a pressure on both the State and the Federal Government to try to get the rules and regulations into line in that place in time. Also changes were brought about by Federal court decisions which led to further confusion and have hampered an orderly implementation of the act.

During the time that the State was passing legislation and adopting regulations, the Oklahoma Department of Mines was also dividing responsibilities for the statutory duties of the department into, we also serve as the health and safety mining enforcement agency of the State. We also regulate underground coal mine and we also regulate all the surface noncoal operations, the quarry. So we had tremendous responsibility at that time. We at that time in 1977 had 11 employees in the Department of Mines.

From 1978 until today though the department has continuously grown to meet the challenge of the New Federalism in mining and the demands of the public and the industry for adequate and consistent regulations. Today, in 1985, the department and staff is approximately 50 employees plus 10 contract employees to supplement the work load. Of this 60 people or 80 percent are professionally trained in mining or in related fields. Just all kinds of various fields. The other 20 percent are either clerical or accounting so we have actually a very small clerical type of force. The total man

years though dedicated to the surface coal program is around 35 people. Additional personnel have been requested from the State legislature but in a time of economic downswing in the coal market and funding shortages in the State as well as the Nation, it is questionable how many additional positions can be supported. But it is the intent of the State to do what is necessary to have a State program.

By any accounting the Oklahoma Department of Mines has come a long way in the last year. In this period when State funding has generally been cut back or at least frozen in most areas, the State agencies have been asked to take a 5 percent cut and over 11 new positions have been added by the State legislature. A 50 percent increase in the man power to the Coal Regulatory Program alone.

We have also expanded our field operations by establishing two additional field offices, both in Miami and one at Krebs and that is in addition to the State Muskogee field office that we have here.

Due to the declining revenue of natural resources in the State and the subsequent funding problems for State agencies, the State is also very concerned that the tax bill before Congress obtain a percentage depletion allowance that they receive congressional consideration Senate bill 1006 and the House bill 2222, that are amended versions of the Fair and Simple Tax Act and it is very important to the natural resources industry and to the economic development of the State of Oklahoma.

In spite of all this, problems, economic problems, there has been a tremendous commitment to improving the quality of Oklahoma's coal programs by the Governor and by the State legislature and it's leaders including Speaker Barker who is a State representative from Muskogee. The State of Oklahoma has submitted the required plans to OSM and we believe them to be adequate and that they have demonstrated the State's commitment to resume authority and to implement the inspection and enforcement portion of the program in a satisfactory manner consistent with that achieved by other States and to demonstrate to OSM, the public and the mining industry.

The period of OSM's assumption of our authority has been a traumatic one for the department of mines and for others concerned with mining in Oklahoma. The department is ready to begin performing inspections and enforce it's responsibilities on a phase basis which will allow the staff doing currently permit review to complete that work and to receive valuable review in the field with OSM inspectors before assuming the full authority.

From OSM's perspective we believe that this phased approach will allow them to evaluate on how the department will work under it's proposed plan for returning to full authority. The department proposed that limited inspections by the authorities given to the State beginning August 1, 1985, which is only 2 months away. Initially the department is requesting authority over the bond forfeiture sites and those cites in the phase two or three bond release. Beginning November 1, 1985, the department will under the plan begin inspection of mines in phase 1 reclamation and those mines actively removing coal. At that time ODOM will have reassumed complete inspection and enforcement authority in Oklahoma.

Finally, the State would also like to notify any interested parties that the procedures for the application of the Small Operators Assistance Program [SOAP] are now in place. Based on a recent related ruling in Oklahoma the State can now fully participate in SOAP Grant Assistance Programs.

Oklahoma eagerly awaits recognition of the long manhours of work expended this year by its citizens in mining activities to regain the authority intended by Congress for each mining State. It is the State's opinion that no one thing can be pointed to that brought this action about. It is our explanation that the finger can be pointed equally in many directions. It is the State's intent to have a State coal regulatory program.

Thank you, Mr. Chairman.

[The prepared statements of Ms. Townley and Mr. Wright follow:]

SUMMARY STATEMENT

Testimony of Gayle Townley, Director of the Oklahoma Department of Mines

Before the

Natural Resources Development and Production Subcommittee

of the

U.S. Senate Committee on Energy and Natural Resources

Muskogee, Oklahoma

June 14, 1985

The Oklahoma Department of Mines is the statutory agency which regulates mining in the State of Oklahoma. It is part of the Office of Chief Mine Inspector which was created at statehood. The Inspector assumed the duties previously held by the Territorial Mine Inspector of the Indian Territory. The Constitution provides that the duties of the Chief Mine Inspector shall be prescribed by the State Legislature with additional duties as commissioned by the Governor. In 1980, the position of Deputy Chief Mine Inspector was created by HB 1834. I, Gayle Townley, have held the Deputy position since March 13, 1984, serving as the responsible state official in the absence of a Chief Mine Inspector, as well as holding the statutory office of Director of the Oklahoma Department of Mines.

In addition to serving as the Deputy Chief Mine Inspector and the Director of the Department, I also serve as the Executive Officer of the Oklahoma State Mining Board, member of the Oklahoma Pollution Control Coordinating Board, member of the Governor's Cabinet on Natural Resources, and act as the Governor's representative to the Interstate Mining Compact Commission.

Mining, the extraction of minerals from the earth, occurs in every county in Oklahoma. It affects Oklahoma's citizens both economically and environmentally. Reclamation, safe operations of the mines, and the protection of the health of those employed there is the principal responsibility of the Department.

Enforcement of mining laws is carried out through regular inspections of mining operations, both underground and surface by Assistant Mine Inspectors for health and safety as well as reclamation of non-coal (metal/non-metal) operations and for health and safety of coal mines. Enforcement of mining laws written to be as effective as PL95-87 is carried out (normally) by State Reclamation Inspectors for reclamation of surface coal operations.

Surface coal permits may be issued for up to five (5) years at a time. The coal operator submits mining plans before mining commences. Surface non-coal and underground coal mining permits are issued for up to five (5) years in one year increments and may be reviewed annually until mining is completed. If explosives are to be used in extracting the mineral, a blasting plan must be submitted before any blasting occurs. This blasting plan becomes part of the permit.

All mining operations in the state of Oklahoma require a reclamation plan. This reclamation plan is covered by bond and is required from the beginning of mining until all disturbed land is completely reclaimed. Permits are not issued until plans are approved by the Oklahoma Department of Mines.

The State Mining Board serves in an advisory capacity to the Department and to the Office of Chief Mine Inspector on matters of reclamation, health and safety. Members represent industry, surface coal, underground and non-coal. The nine member panel is appointed by the Governor and confirmed by the State Senate.

The State of Oklahoma was one of the first to pass legislation and to file regulations to meet the requirements of the federal "Surface Mining Control and Reclamation Act of 1977" for an initial regulatory program. Stormy times then ensued while OSM continually updated and changed the federal regulations and the Oklahoma Department of Mines was dividing responsibilities for the statutory duties of the department and the Office of Chief Mine Inspector among its small staff. In early 1977, the Office of Chief Mine Inspector had eleven employees. The Chief was an elected official of the state at that time.

In 1978, the Office of Chief Mine Inspector was removed from the statewide ballot along with two other elected offices to an appointed status and the passage of five other constitutional issues. In 1978 and 1979 the Coal Reclamation Act of 1979 was passed to guarantee the regulation of reclamation on surface coal operations. From 1978 till today the Department has continuously grown in staff to meet the challenge of the new federalism in mining and the demands of the public and industry for adequate and consistent regulation. Today, the department is staffed by approximately fifty (50) permanent and ten (10) contract employees, 80% of whom are professionally trained in mining or related skills. Of this number approximately twenty-eight (28) are assigned full-time to supplement the surface coal program bringing the total man-years dedicated to the surface coal program up to around 35 persons. The department has requested additional help from the legislature to deal with a nagging backlog of bond forfeitures requiring reclamation work by the state and the review of previous work by the department for OSM. Approximately eight (8) additional positions to be assigned full-time to surface coal have been requested and six of the contract positions being used to support the coal program are being requested on a permanent basis. In a time of economic downswing in the coal market and funding shortages in the state as well as the nation it is questionable how many additional positions can be supported.

The Office of Surface Mining's (OSM) decision to substitute federal enforcement of portions of Oklahoma's permanent regulatory program (733 action) became effective on April 30, 1984. As the newly appointed Deputy Chief Mine Inspector, I was confronted by the considerable dislocations that such action caused and the need to respond effectively to OSM's action.

By any accounting, the Oklahoma Department of Mines (ODM) has come a long way in the last year. In a period when state funding has generally been cut back or at least frozen in most areas, over 11 new positions, a 50% increase in manpower, were authorized for the regulatory program. This represents a tremendous commitment to improving the quality of Oklahoma's program by the Governor and the state legislature and its leaders.

The department has been reorganized to deal more effectively with the permanent regulatory program. In addition to the new positions created, several other positions became vacant, and the department undertook a major recruitment and hiring effort. (All staff positions are currently filled by qualified people.) After hiring it was then necessary for the newly employed staff to be adequately trained in its new responsibilities, less than 30% of whom were with the department before the OSM action. Of that number only one-half are still in the same positions. Training and retraining has now been accomplished.

Supervision has been increased and management controls tightened. Supervisors have also been provided with necessary training to better perform their duties. Computerization of the department records and new data management systems are being put in place. Training efforts for all personnel have been established on a regular basis and have become an integral part of the department's planning for the future.

The 733 action required that the state submit a plan to reassume full authority for implementing the inspection and enforcement functions of the approved program. We have submitted the plan addressing the following requirements:

Staffing: The state proposal must include a demonstration to the satisfaction of the Director of the State's commitment to hiring a sufficient number of inspection and enforcement personnel. It must affirmatively demonstrate that these personnel will be qualified.

Training and Supervision: The proposal must demonstrate to the satisfaction of the Director (OSM) that these personnel will be trained and supervised in order to implement all inspection and enforcement requirements of the approved program.

Adherence to Approved Program: The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure the Director (OSM) that Oklahoma will be in full compliance at all times with provisions of the approved program.

The State of Oklahoma has submitted the required plan to the OSM. The Department of Mines believes that it has more than adequately demonstrated the state's commitment to reassume and to implement the inspection and enforcement portions of the program in a satisfactory manner, consistent with that achieved by other states, to OSM, the public, and the mining industry.

Although OSM only assumed authority for inspection and enforcement, our state permitting program was also determined by OSM to be deficient in some critical areas of the permitting section. The department was required to address a large backlog of old permitting actions, along with a backlog of new applications and revisions greater than the department had historically added which were being submitted by the mining companies to assure future operations or to improve their current operations and to bring their permits up-to-date. Four additional people were placed in new positions which are connected with permit review. Reclamation inspectors in training who had

a skilled background equivalent or greater than the permitting personnel were assigned to review permit applications for adequacy to aid the technical division in this backlog. These inspectors have accomplished miracles compared to what the department had been staffed to perform previously.

The period of OSM assumption of Inspection and Enforcement authority has been a traumatic one for the Department of Mines and for others concerned with mining in Oklahoma. Considerable time and effort has been expended in reorganizing the Department at the request of the Governor and legislative leaders, hiring and training staff, evaluating workload, assigning staff to various permitting functions, and dealing with OSM on a daily basis. OSM on their part has also expended considerable time and effort to bring the Oklahoma program up to speed.

The department is ready to begin performing its inspection and enforcement responsibilities on a phased basis which will allow the inspection and enforcement (I&E) staff currently doing permit review to complete that work and to receive valuable reviews in the field with OSM inspectors before full I&E authority is returned to the state. From OSM's perspective, this phased approach allows OSM to evaluate and to help the department improve its I&E work under the proposed I&E Plan before returning full authority to the state.

The department proposes that limited inspection and enforcement authority be given to the state beginning August 1, 1985. Initially, the department is requesting authority over the bond forfeiture sites and those sites in phase II and III bond release. This will allow the state to review any environmental problems that might exist on these sites and to develop plans to correct these problems with the available bond money. (A grant is being sought from USEPA for 205(j) funds in order to conduct a pollution study and ranking of the sites.) After plans have been developed these sites will be advertised and contracts let by the state. This action will allow the Department of Mines to state action on many of the bond forfeiture sites in the state and to help to insure that maximum environmental protection is given to these areas and to better protect natural resources of the state. Also the inspection of phase II and III bond release sites will allow our inspectors to begin work on mining sites to demonstrate their technical and management ability to handle the program. This inspection of Phases II and III will also allow OSM to monitor ODM's progress as a regulatory agency.

Beginning November 1, 1985, ODM will under the plan begin inspection of mines in phase I reclamation and of those mines actively removing coal. At this time ODM will have resumed complete inspection and enforcement authority in Oklahoma.

In an effort to make an orderly transition ODM requests that before sites are given the final approval for state inspections, that an oversight team inspect the site to establish the condition of the site at that time.

This team is proposed to be staffed by an ODM inspector, an inspector from the OSM Muskogee Field Office and a representative of the Western Area Deputy Assistant Director's office (PDI). The team might also have an exofficio member from the environmental community accompany them when possible. This team will establish a baseline of data concerning the condition of the site at the time ODM accepts responsibility for the site. This baseline data can then be used to evaluate the effectiveness of ODM's inspection and enforcement actions at some future date.

Finally, the state would also like to notify any interested parties that the procedures for the application of the Small Operators Assistance Program (SOAP) are now in place. Based on a recent related ruling in Oklahoma the state can now fully participate in SOAP grant assistance programs. One operator has made application for funds. A representative from the Department and OSM Tulsa Field Office personnel met this week to coordinate efforts in the process of the application.

Oklahoma eagerly awaits recognition of the long manhours of work expended this year by its citizens in mining activities to regain the authority intended by Congress for each mining state.

SUMMARY STATEMENT

Testimony of Michael Wright of Scientific Social Research, Norman, Oklahoma
before the
Natural Resources Development and Production Subcommittee
of the
United States Senate Committee on Energy and Natural Resources
Muskogee, Oklahoma, June 14, 1985

The report entitled "Oklahoma Coal: Reclamation Issues and Economic Development Prospects" resulted from a research effort performed under contract with the Oklahoma Department of Mines and was completed May 1, 1985.

Major findings relate to the regulatory activity of the federal Office of Surface Mining (OSM) and to economic development possibilities for the coal industry in eastern Oklahoma.

In regard to the OSM, an analysis of data published in that agency's 1982 Annual Report revealed that, in states characterized by small mine operators, it was conducting regulatory inspections at a frequency almost five times greater than in states whose coal production was dominated by large operators. For example, in the state of Tennessee, in which 85% of the mines produce less than 100,000 tons per year, there were 13 OSM inspections per mine. For Oklahoma, also in the small mine category, the rate was 8.2 inspections per mine.

On the other hand, Texas mine operators experienced only 1.1 inspections per mine in 1982. Texas mines are all in the large production category of greater than 100,000 annual tons.

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In spite of the greater vigor by which OSM was carrying out regulatory activity in the small mine states, the violation rate for these states was not significantly greater than it was for the large mine states. For example, in Texas the rate was 1.6 violations per 10 inspections. In Oklahoma, which was inspected at a frequency seven times greater than its neighbor to the south, the violation rate was lower at 1.4.

For six states whose coal production is largely accounted for by small mines, the average violation rate was 2.5 per 10 inspections. For the large mine states, the rate was 1.8. This is not a statistically significant difference.

Looking at economic development prospects for Oklahoma coal, the successful stimulation of the industry to achieve a higher level of production and efficiencies resulting from improved economies of scale would appear to hinge on the possibility of opening a market for the local product from the consumption of it by the state's electrical utilities.

The state's coal-fired plants have been burning Wyoming coal, which possesses the low-sulfur characteristic desirable for air quality standards. In 1983, Oklahoma utilities purchased 10.7 million tons of the Wyoming product; however, at least partial use of Oklahoma coal may be feasible for the following reasons:

-- achievement of the desired low levels of sulfur emissions may be possible by means of blending high-sulfur Oklahoma coal with low-sulfur Wyoming coal;

-- Oklahoma has considerable reserves of low-sulfur coal; a 1975 Bureau of Mines survey estimated the state's reserve base of strippable coal containing less than 1% sulfur to be 120.5 million tons;

-- Oklahoma coal used recently for out-of-state utility consumption has a 40% higher Btu rating than Wyoming coal, and this fact combined with the absence of freight charges from Wyoming suggests that the economies associated with using the local product should be seriously explored and may offset the possible plant modification costs associated with conversion.

Currently, Oklahoma utility customers are paying about \$300 million per year for Wyoming coal and associated freight charges. In the meantime, in eastern Oklahoma 15 counties are experiencing double-digit unemployment and 23 counties are experiencing unemployment greater than eight percent. A decision to burn only a 25% blend of Oklahoma coal in the state's electrical generators would stimulate about 2600 new jobs.

Earlier this week, a resolution introduced in the Oklahoma Senate encouraged the state's utilities to consider a blend of ten percent Oklahoma coal with their present use of Wyoming coal. This is a very modest request.

If the state's political and business leadership wish to promote economic growth, then Scientific Social Research recommends that a comprehensive study be undertaken to explore the feasibility of a coal development program for eastern Oklahoma.

Presented by:

Michael Wright
Michael Wright

Research Associate
Scientific Social Research
Norman, Oklahoma

OKLAHOMA COAL: RECLAMATION ISSUES AND ECONOMIC DEVELOPMENT PROSPECTS

A Report Prepared for

The Oklahoma Department of Mines
4040 North Lincoln
Oklahoma City, OK

by: Scientific Social Research, Inc. (SSR)
205 East Main
Norman, OK

May 1, 1985

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SUMMARY

Results from the study of the Oklahoma coal industry with emphasis upon reclamation efforts may be summarized as follows:

(1) a disproportionate share of the new costs introduced as a result of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87) has been borne by small operators;

(2) the 1983 decline in coal prices in the international market introduced an additional burden for small operators;

(3) since most of Oklahoma's coal has been produced by small companies, PL 95-87 has impacted the local coal industry in the manner described in (1) and (2) above; one of the apparent consequences has been the encouragement of industry concentration;

(4) the combination of new costs related to reclamation and the 1983 fall in coal prices has contributed to recent insolvencies and bankruptcies leading to a series of reclamation defaults and bond forfeitures by Oklahoma coal operators;

(5) controlling for differences in industry conditions, in 1982 Oklahoma coal operators compared favorably to those of other states in terms of reclamation violations resulting from federal regulatory inspections by the Office of Surface Mining (OSM);

(6) 1982 data published by the OSM indicate that the federal agency is carrying out a vigorous regulatory effort against small operators;

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(7) so far we have not come into contact with any information assembled in such a way as to permit a complete evaluation of the success of recent land reclamation efforts in Oklahoma compared to the period before PL 95-87; data published in 1974 by the Oklahoma Geological Survey indicate that as of 1973, less than 10% of the land disturbed by surface coal mining in the state had been totally reclaimed; Geological Survey personnel stated that they had not compiled information of a similar nature since the 1974 study;

(8) a route of development for the Oklahoma coal industry appears possible by means of encouraging Oklahoma electric utilities to consume the local product; the state's coal-fired plants have been burning Wyoming coal, which possesses the low-sulfur characteristic desirable for air quality standards; however, at least partial use of Oklahoma coal may be feasible for reasons set forth in Section V.

I. INTRODUCTION

Recent enforcement difficulties experienced by government agencies charged with the regulation of surface mining have prompted a need to explore the question of whether the enactment of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87) has impacted the coal mining industry in such a way as to prompt a high rate of insolvencies, bankruptcies, and reclamation defaults.

The general purpose of PL 95-87 was to establish a nationwide program to protect the environment from the adverse effects of coal mining, and specifically to assure that adequate land reclamation operations would be undertaken both during and after cessation of mine operations. The Act established the Office of Surface Mining Reclamation and Enforcement within the Department of the Interior, and provided for assisting the states in developing and implementing programs to achieve reclamation purposes.

In Oklahoma the agency charged with enforcement of reclamation programs is the Oklahoma Department of Mines (ODM). Acting under the authority of the Oklahoma Coal Reclamation Acts of 1978 and 1979, the ODM pursues reclamation goals envisioned by PL 95-87.

Specific functions of the ODM include the inspection of mines from the point of view of safety and environmental concerns. Reclamation requirements are enforced by a permitting program and the posting by operators of a bond which is refunded in increments after the regulators are satisfied that proper land restoration including revegetation has taken place.

Recent financial instability in the Oklahoma coal industry along with the emergence of a series of reclamation defaults has become a major topic of concern within the ODM. The purpose of this report is to analyze this development within the context of the general conditions of the coal industry -- both in Oklahoma and nationwide -- with specific emphasis upon the new conditions introduced by PL 95-87.

II. INDUSTRY PERFORMANCE: THE NATIONAL PICTURE

The difficulties experienced by Oklahoma mining regulators prompt an examination of the general question of the effect of PL 95-87 upon the coal industry as a whole. More precisely, we wish to discover whether the reclamation costs imposed by the law have seriously encumbered the industry's profitability and/or altered its structure.

Initially we shall inspect for recent years the national industry's performance in terms of key financial and production variables, but at a later stage we shall focus our attention upon coal in Oklahoma.

Growth And Profitability

From 1972 to 1982 production of bituminous coal and lignite coal in the United States grew from 595.4 million tons to 883.5 million.

Events which have stimulated this growth include the higher oil prices brought about by the Arab Oil Embargo of 1973 and the passage of the Powerplant and Industrial Fuel Use Act of 1978, which instituted a ban against the construction of new gas-fired power plants. These developments have encouraged more use of coal by electrical utilities, which have more than doubled their consumption since 1969.

Due to decreased demand for steel and increased competition from foreign steel producers, coal consumption at coke plants has declined steadily in recent years. However, during 1974 -- its peak consumption

year since '72 -- coal purchased by coke plants accounted for only 16% of total U.S. consumption (U.S. Industrial Outlook 1985, Department of Commerce, p. 8-2).

A review of annual statement studies published by Robert Morris Associates of Philadelphia does not support a contention that U.S. bituminous coal operators' profits have been seriously disturbed by new reclamation costs imposed by Public Law 95-87. Whatever costs may have resulted from the new law seem to have been offset by the rising productivity trend which began in 1977. Total productivity in 1983 was reported by the Department of Energy to be 21.19 tons per miner per day compared to 14.84 in 1977 (see Table 2).

Net profits per company surveyed by RMA rose with productivity through 1981, and then fell during '82 and '83 while productivity continued to rise (see Figure 1). Although new reclamation bonding requirements mandated by PL 95-87 came into effect in 1982, the continued profit fall into 1983 was also occurring simultaneously with a 5% drop in coal prices accompanied by a 7% fall in production.

Average prices for American coal in current dollars rose steadily from \$7.66 per ton to a peak of \$27.14 in 1982 (Quarterly Coal Report, DOE/EIA - 0121 (Jan 85)). The 1983 price drop was to \$25.85. Industrial Outlook attributed the 1983 price decline to falling exports due to world-wide recession, above-normal coal stockpiles in many countries, and the re-entry of Poland and Australia into the world market (p. 8-3).

One reason for the overall rise in productivity can be found in the fact that surface mining -- about three times as productive as underground on a tons/miner/day basis -- has come to dominate the industry (see Table 3). From 1972 to 1982 surface mining's share of total coal production grew from 49% to 59% (Quarterly Coal Report, DOE/EIA, ~ 0121 (Jan 83)).

Another basis for profitability strength lies in the comparative prices of surface and underground coal. The benefits of surface mining's superior productivity have not been completely shared with coal consumers. Although productivity is greater by a multiple of three, surface coal is not three times as cheap to buy. In fact, from 1978 to 1983 the ratio of surface coal prices to underground prices advanced from .53 to .60 (see Table 3).

Standard & Poor's Industry Surveys (Dec 20, 1984) has also commented upon the increasing productivity trend. Observing that output/miner/day has been steadily rising since 1977, Standard & Poor's predicts that further productivity gains will be reported for 1984 and will probably extend into 1985. Furthermore: "Bigger and better tractor-scraper and extremely large earth-moving trucks and carriers are being used to facilitate both overburden removal and land reclamation" (p. R 39).

Industry Concentration

One effect of Public Law 95-87 may be to have encouraged greater concentration of the industry. Although no coal operators have given us access to internal financial data by which to make a measurement of the cost impact of reclamation requirements, it is likely that smaller companies bear a

disproportionate burden due to their inability to benefit from the same economies of scale enjoyed by larger firms. (For example, consulting fees related to permit application costs may now run as high as \$25,000.)

The development since the mid 70s of a national industry concentration trend has come to the attention of Mining and Reclamation Council president Dan Gerkin:

According to the Department of Energy, companies mining over one million tons per year have realized a 24 percent increase in their overall share of the coal market since the mid 1970s, while operators producing less than one million tons realized a 39 percent decline in their share. Fifteen years ago there were approximately 7,000 coal operators. . .today there are less than 3,600. The Mine Safety and Health Administration says that nearly 60 percent of the small mines (less than 100,000 tons per year) have been closed since 1977.

-- LandMarc
Jan/Feb 1985, p. 5

Gerkin mentions reclamation requirements as a contributor to new burdens on the industry along with other regulatory programs covering mine safety, worker compensation, and air quality. He also devotes some discussion to the passage of the Staggers Rail Act and the failure of the Interstate Commerce Commission to protect captive shippers from the effects of deregulation and the new control over coal haulage rates gained by rail carriers.

In sum, national coal industry performance data available to SSR indicate that, at least for larger firms, the advantages of higher productivity in surface mining, rising prices through the early 80s, and production increases stimulated by rising utility demand have combined to offset the

new costs introduced by PL 95-87. Data cited by Gerkin suggest that smaller companies have not been able to cope as well with reclamation and other regulatory requirements.

III. THE OKLAHOMA INDUSTRY

Impact Upon Small Operators

Evidence available to SSR supports the view that small coal operators have borne a disproportionate share of the new cost burdens introduced by the implementation of Public Law 95-87. Since most Oklahoma companies have been small companies producing in the range of less than 100,000 tons per year, the disproportionate impact is of particular interest to the Oklahoma Department of Mines.

Compliance with high reclamation standards has created an additional fixed cost component which manifests itself in a salient fashion in the permitting and bonding stage of a coal operation. Following the passage of the new law, Oklahoma bonding requirements for operators desiring permits were raised in 1979 from \$500 to \$1000 an acre. In 1982, the bonding requirement again changed to a complex system of computation reflecting an estimate of the anticipated restoration costs based upon the projected area and depth of the proposed minesite.

The permit application process now requires engineering expertise which is usually beyond the in-house capability of the small company. Consultant fees for the various associated services can cost as much as \$25,000 -- a front-end cost not recoverable in the event of a permit denial.

Bonding requirements can be met by either the posting of a cash bond, a letter of credit from a bank, a certificate of deposit, or by the payment

of a fee to a surety company which guarantees the reclamation in the event of a default by the operator. Under the surety company arrangement the fees function much in the same way as do premium payments to insurance companies.

Bonds per acre vary according to the expected dimensions of the mine, but bond amounts for new permits requested from the Oklahoma Department of Mines since August 1984 have been in some cases greater than \$5000 per acre. Bond for one 290-acre permit was set at \$1.3 million.

Another important variable related to reclamation costs is the thickness of the coalbed. Thin coalbeds yield fewer tons of coal per acre, and thus result in greater reclamation costs per ton mined. On a unit basis these costs will be five times greater for a 12-inch seam than for a 60-inch seam (see Table 4).

Thin coal seams have been the rule for Oklahoma operators. In 1982, 90 percent of the state's production was from seams less than 25 inches in thickness (see Table 5). This condition has been accompanied by an extremely high overburden ratio averaging 29.9 cubic yards excavated per ton of coal mined in the state during 1978. This compares to 11.3 yards per ton for the entire U.S. (Coal Data: A Reference, DOE/EIA - 0064(84)).

The Oklahoma industry has also suffered from marketing problems. The decline in the American steel industry has introduced a companion decline in the demand for metallurgical coal while the continuing high price of the dollar on the world currency market has dampened export possibilities.

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Another significant feature of the local environment has been the fact that Oklahoma electrical utilities have been burning Wyoming coal instead of Oklahoma coal. The issues and economic development possibilities associated with burning Oklahoma coal by the state's utilities are discussed in detail in Section V of this report.

Industry Concentration in Oklahoma

Data published by LandMarc magazine and cited in Section II of this report bring into focus the extent to which an industry concentration trend has materialized at the national level since the mid 70s. The structure of the Oklahoma coal industry also has changed in recent years.

Production data available at the Oklahoma Department of Mines provide evidence that the combined impact of the 1983 price fall and new reclamation costs has been to encourage a concentration trend in the state's coal industry. For example, from 1978 through 1981 the number of producing companies in the state varied between 34 and 45 while annual state production averaged more than 5 million tons. However, following the combined events of the price decline and new reclamation requirements, the number of producers fell to 23 while production dropped to 3.6 million tons in 1983. In the meantime, the percentage of production accounted for by the three largest companies advanced from 34% in 1981 to 53% in 1983. In 1984 -- within the new more concentrated industry structure -- total production began to climb back and reached 4.3 million tons (see Table 6).

Insolvencies, Bankruptcies, and Reclamation Defaults

In the wake of these developments, reclamation defaults have come to receive a growing degree of attention and concern from the Oklahoma Department of Mines. Information assembled by the ODM in January 1985 listed seventeen coal companies which had mined in Oklahoma since 1978 and later defaulted on their reclamation obligations. Of these, five companies had entered bankruptcy proceedings and several others had claimed insolvency. "In some cases," said an ODM records analyst, "they simply stopped mining and disappeared."

These seventeen companies -- a number equal to half the Oklahoma producers operating in 1981 -- had ceased mining, abandoned sites, and prompted reclamation bond forfeiture notices from the ODM. A total of thirty-four permit areas were referenced in the ODM document as having been mined by these companies. The January memo indicated that satisfactory bond collections had taken place for only six of thirty-six forfeiture actions. At that time a problem status still existed for each of the remaining forfeitures, and twenty-three cases had either been referred to the ODM attorney or forwarded to the state attorney general for legal action. In ten of the forfeiture cases, surety companies had agreed to accept reclamation responsibilities during the permit application stage.

A more recent development related to land reclamation problems in Oklahoma has been the initiation of a \$25 million lawsuit against state and federal regulators by the Turner Brothers, Inc., the state's largest

coal producer. The suit accuses the ODM along with the federal Office of Surface Mining (OSM) of engaging in arbitrary and capricious enforcement of mining reclamation laws. The state Attorney General's office, however, says that "Turner Brothers is the most flagrant violator of state reclamation law" (The Daily Oklahoman, March 3, 1985, p. 1).

The Turner company has filed a bankruptcy reorganization petition but continues to operate. Also at issue in the Turner matter is the fact that the ODM has denied the company two recent applications for mining permits in Rogers and Craig counties. Bankruptcy Judge James Ryan's order to grant the permits was stayed by U.S. District Judge Frank Seay. The Turners have contended that the denial of the permits has jeopardized their ability to supply coal under a contract with the City Utilities of Springfield, Missouri.

A Reclamation Evaluation Measure

In 1974 the Oklahoma Geological Survey published a report which stated that as of mid 1973, a total of 35,424 acres of land had been disturbed by surface mining in Oklahoma. Of this, only 3,384 acres -- less than 10% -- was described as totally reclaimed. As of this writing SSR has not received sufficient information to permit a computation of a reclamation rate for all new lands disturbed by coal mining in Oklahoma since 1973 (see Description of Disturbed and Reclaimed Surface-Mined Coal Lands in Eastern Oklahoma, by Kenneth Johnson, Oklahoma Geological Survey, 1974).

Some evidence related to the question of whether current reclamation projects are keeping pace with new land disturbance is available by

inspecting ODM records of 1983 bonding and bond release activity. In that year, 1945 new acres were bonded for surface coal mining, and 2406 acres were granted final reclamation bond release. Production data for 1983 indicate that 1595 new acres were mined that year.

The federal Energy Information Administration (EIA) has published a limited amount of data about acres mined and acres reclaimed within the various states. For 1978, the EIA reported 2,272 acres mined by surface methods in Oklahoma and 2,570 acres reclaimed. This constitutes a ratio of 1.13 acres reclaimed per acre mined. For all six states in Oklahoma's production category the average for this ratio was 1.09 (see Table 7).

Moving to a more general level of discussion, SSR would like to suggest that surface mining reclamation efforts within specified areas be evaluated by a formal measure. Although the development of such a measure is outside the scope of this report, we would like to propose a few guidelines at this time:

(1) An evaluation measure should begin with an undertaking similar to that reflected in the Oklahoma Geological Survey's 1974 publication; it should specify an area and time interval, count the number of acres disturbed within that period, and then -- at a later point in time -- count the reclaimed acres disturbed within the earlier specified time interval.

(2) An evaluation measure should also take into account the conditions under which the area's local coal industry operates. These considerations are addressed in detail in Section IV, which is devoted to discussion of OSM enforcement activity.

(3) Another conceptual issue deserving regard in the construction of an evaluation measure would be that of changing policy standards. The passage of PL 95-87 has brought about a higher level of official expectations for reclamation performance. Therefore, if one wishes to compare a regulatory agency's activity between different time periods, one should bear in mind that judgments about reclamation performances of the more recent period may have been different by the standards of an earlier day.

In summary of this section, the fact that Oklahoma's coal industry has been characterized by small operators needs to be highlighted. Another area of emphasis is upon the disproportional burden that new reclamation costs have imposed upon small companies. Recent bankruptcies and insolvencies in the Oklahoma coal industry are probably at least partially accounted for by this fact. Finally, from its contact with the Oklahoma Department of Mines and from review of federal literature about the coal industry, SSR has not received any evidence that public policy-makers are guided by a well-developed formal system for evaluating reclamation performances of different areas. We have proposed guidelines for the development of such a measure.

IV. OSM REGULATORY ACTIVITY

The Office of Surface Mining (OSM) was established by PL 95-87 as the agency responsible for administering the national enforcement program for surface mining reclamation. OSM's authority includes the review and approval or disapproval of state programs for mine control and reclamation. Part of the agency's activity consists of the performance of "oversight" inspections to evaluate the inspection activity of state regulators in relation to PL 95-87 standards and goals.

The OSM's 1982 Annual Report published numerous details about reclamation violation notices resulting from OSM enforcement efforts. SSR studied this data in order to understand Oklahoma's relationship to OSM and to observe the violation record of its coal industry compared to other states. In order to construct a model for carrying out the comparison, it was thought appropriate that the exercise be controlled by distinguishing among the different conditions under which the coal industries of the various states operate.

One obvious distinction is that some states have large industries and others are small. Another allowance needs to be made for the fact that the degree of industry concentration within individual states can vary. Coal production activity within some states will be dominated by a few large producers, and these producers will have the opportunity to benefit from economies of scale. One would not expect the cost of new reclamation requirements to be so burdensome to large producers as to the small ones.

Another variable to be considered by a comparison model would be thickness of coal seams. As discussed earlier, this measure has an inverse linear relationship to reclamation costs and thus operators in areas with thin coal seams endure an additional difficulty.

For these reasons Oklahoma's 1982 OSM violation record was compared to all other states whose surface coal production for that year was between one and six million tons. These were Kansas, Maryland, Tennessee, Washington, and Missouri (see Table 5). For each state we have also listed the proportion of its production from seams less than 25 inches in thickness, the number of OSM inspections per operating mine, and its OSM violation rate.

Oklahoma's violation record was 1.4 violations per 10 inspections. Of the six states, the range of violation rates was from .6 to 5.8. Although rates lower than Oklahoma's were obtained by Maryland (.6), Missouri (1.2), and Kansas (1.1), only Kansas and Oklahoma shared the disadvantage of having all or almost all of their coal mined from thin seams. For the other four states, the proportion of coal mined from thin seams averaged only 31%.

OSM regulators have displayed a strong interest in Oklahoma. The federal agency carried out 8.2 inspections per mine in the state during 1982. Of the six states in the comparison field, only Tennessee had a stronger vulnerability at 13.

Observation of OSM inspection/violation behavior in states characterized by large coal companies suggests that the federal regulators may be operating under an informal policy encouraging a more vigorous enforcement effort

against small coal operators but with regulatory leniency for large firms.

The 1982 information about Texas and Wyoming provides evidence of this tendency. In that year, these states produced 35 million and 107 million tons of coal respectively. In both of them, the company production average was more than three million tons. In Texas, none of the mines produced less than 100,000 tons, and in Wyoming only 82 were in this production category. For both states, OSM carried out in 1982 only 1.1 inspections per mine. For the six states in the small production category observed earlier, the average OSM inspection rate was 6.5 per mine.

More evidence related to this apparent informal policy is available by observing OSM activity in other large states which differ from Wyoming and Texas by virtue of having a large component of small mines contributing to output. Production in 1982 was greater than 30 million tons each for Indiana, Kentucky, and Pennsylvania, but more than half of the mines in each of these three were in the category of less than 100,000 tons. For these states, OSM's average inspection rate was 10 per mine (see Table 8).

These preliminary observations of OSM inspection behavior led to the performance of two formal tests of statistical association concerning the relationship between the inspection rate of a state and the structure of its industry. For these tests, all eleven states discussed above were rank-ordered according to the percentage of small mines in their respective industries. For our purposes mines producing less than 100,000 tons annually were considered small.

The next step was to list for each state its OSM inspection rate as described earlier in this section. The data for these two variables are presented for the eleven states in Table 9.

The first measure of association to be employed was the product-moment correlation measuring the strength of linear association between two quantitative variables. On this measure the linear correlation was direct and strong as indicated by the coefficient of $+0.72$. (A coefficient of $+1.00$ reflects perfect linear correlation.) The significance level for this result was $.012$. This finding may be interpreted by stating that the higher the percentage of small mines within a state's total number of mines, the greater will be its likelihood of having a high OSM inspection rate.

In order to view the data from a different vantage point, another statistical test involving the comparison of means (averages) was employed. For this test the eleven states were arranged into two groups -- those with a large percentage of small mines and those with a small percentage. Means for inspections per mine were calculated for each group. For the first group the mean of 9.61 was larger as expected. For the second group the mean was 2.16 . The t-test significance level for this result was $.024$. Interpreting this, one may say that among states with a large proportion of small mines, the average inspection rate was significantly higher.*

In review of this section, SSR emphasizes that one should allow for the fact that reclamation costs per acre vary inversely with the thickness

*Although the results are supportive of an hypothesis of association between the two variables, it is necessary to point out that a firm conclusion is unwarranted at this time because of the danger of committing the "ecological" fallacy. This refers to the fact that our data consist

of coal seams. With this in mind, attention is focused upon a comparison of the 1982 coal industry violation records of Oklahoma and Kansas operators. The OSM violation rates of these two states were similar at 1.4 and 1.1 violations per 10 inspections respectively. Kansas was chosen for this comparison to Oklahoma because it is the only other state which resembles Oklahoma both by being in the small production category and by having most of its production from thin seams (less than 25 inches).

Another point in summary is that Oklahoma was affected by an apparent OSM enforcement pattern of carrying out more vigorous inspection efforts against operators in states characterized by a large proportion of small mines contributing to coal output.

of rates within states instead of case reports about individual mines. It is possible that the larger mines were inspected with greater frequency than the smaller ones. Although we consider this to be unlikely, the existence of this possibility limits the degree of confidence one could have in an hypothesis of association.

V. OKLAHOMA COAL AND ECONOMIC DEVELOPMENT

A route of development for the Oklahoma coal industry appears possible by means of encouraging Oklahoma electric utilities to consume the local product. The state's coal-fired plants have been burning Wyoming coal, which possesses the low-sulfur characteristic desirable for air quality standards. In 1983, Oklahoma utilities purchased 10.7 million tons of the Wyoming product (see Table 11); however, at least partial use of Oklahoma coal may be feasible for the following reasons:

- achievement of the desired low levels of sulfur emissions may be possible by means of blending high-sulfur Oklahoma coal with low-sulfur Wyoming coal;
- Oklahoma has considerable minable reserves of low-sulfur coal;
- the higher Btu rating of Oklahoma coal along with the absence of freight charges from Wyoming combine to suggest that the economies associated with using the local product should be seriously explored and may offset the possible plant modification costs associated with conversion.

Blending Experiments

OG&E and Public Service of Oklahoma (PSO), both Oklahoma utilities, have begun programs to experiment with blending Oklahoma coal with the Wyoming coal which has previously been the exclusive fuel used by their generators. A recent Tulsa Tribune article (April 17, 1985) states that PSO began blending tests in December 1984 after ordering 10,000 tons from the

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McNabb Coal Company in Catoosa. PSO officials state that problems may emerge from the fact that Oklahoma coal is hotter than the plant's design had intended to accomodate. Another problem resulting from a test burn was greater building of residue after combustion. Final evaluation of the experiments had not yet been performed by the date of the article.

PSO spokesman Jim Goss was quoted by the Tribune as stating that the utility would like to use some Oklahoma coal "to support the energy industry in Oklahoma (and) . . . spur the Oklahoma economy." The article indicated that the Oklahoma coal for the experiment was low enough in sulfur content to meet environmental requirements.

OG&E's position on Oklahoma coal was explained to SSR by telephone interview with company spokesman Jim Wilson (April 5, 1985). Wilson stated that the costs associated with the installation and maintenance of plant scrubbers to reduce sulfur emissions had been a strong factor in the decision against using high-sulfur Oklahoma coal. Nonetheless the company is aware of the availability of low-sulfur local coal and has purchased 20,000 tons of it for blending tests. In addition, Mr. Wilson stated that OG&E is planning to conduct test burns with 20,000 tons of high-sulfur Oklahoma coal.

Low-Sulfur Oklahoma Coal

Oklahoma has considerable minable reserves of low-sulfur coal. Geological Survey information states that approximately 687 million tons of Croweburg coal are present in Oklahoma and that this coalbed contains less than 1 percent sulfur "in most of the area of its distribution in

the shelf" (S.A. Friedman, January 1983, Oklahoma Geological Survey). A preliminary report of the Survey states that in 1984 Oklahoma operators mined 1.09 million tons of Croweburg coal and that this was about 26% of the state's total production for that year.

An estimate of the reserve base of low-sulfur Oklahoma coal was published in 1975 by the U.S. Bureau of Mines (Information Circular 8693). According to this document the state's reserve base of strippable coal containing less than 1% sulfur was 120.5 million tons. The Bureau's definition of reserve base states that beds are included "that are presently being mined or for which there is evidence that they could be mined commercially at this time." The average thickness of coalbed seams comprising the Oklahoma estimate was 24 inches. An 80% recovery factor was assumed for strippable coal.

Economics of Oklahoma Coal

A 1983 study commissioned by the Council of Ozark Governors addresses the coal industry in Kansas, Oklahoma, and Arkansas. Leading its list of recommendations is the suggestion that an in-depth study should be made into the blending of Oklahoma coal with Wyoming coal for utilization by area utilities, and the authors state that it is now possible to buy Oklahoma coal at a favorable price, due to recent increased freight charges associated with Wyoming shipments (see The Coal Industry in Kansas, Oklahoma, and Arkansas, Council of Ozark Governors, 1983).

Data published recently by the federal Energy Information Administration not only reinforce this opinion but also point to the fact that minable reserves of low-sulfur coal exist in Oklahoma. EIA origin/destination tables reveal that in 1983 Oklahoma shipped a quarter of a million tons of low-sulfur coal to the Big Bend plant of Florida's Tampa Electric Company. This represents 21% of Oklahoma's 1983 coal shipped to utilities -- all out-of-state. The average sulfur content of this coal at 1.05 pounds per million Btu was well within the 1.2 pounds per million regulatory standard. At the same time, the Western Farmers Electric Coop in Hugo was burning low-Btu Wyoming coal with a higher sulfur emission content measured at 1.18 pounds per million Btu. On ash content by weight, the Oklahoma measure was slightly higher at 6.9% compared to 6.1% for the Wyoming product in Hugo. Of no less importance is the fact that the Tampa delivered price of the Oklahoma coal in Btu terms was less than the delivered price of the Wyoming coal received by Western Farmers -- \$1.91 per million Btu compared to \$2.05 per million Btu paid in Hugo (see Tables 10 and 11).

The Tampa utility uses the Oklahoma coal in a blending mixture which includes coal from Illinois and Kentucky. The Oklahoma coal was about 8% of the amount received by the plant in 1983 and was lower in sulfur and higher in Btu rating than the coal from the other states.

Due to thinner seams and higher overburden ratios the mine price per ton of Oklahoma coal is considerably greater than that of Wyoming. The Wyoming advantage disappears, however, after allowing for freight costs and its lower Btu rating.

A striking comparison is also available between the delivered cost of Oklahoma high-sulfur utility coal to nearby Kansas and the delivered cost of the Wyoming product consumed by OG&E. In 1983, the Empire District Electric Company in Kansas paid \$1.24 per million Btu for 154 thousand tons of Oklahoma coal. During the same year, OG&E Sooner generator received 2 million tons of Wyoming coal at \$1.58 per million (see Tables 10 and 11). Converted to Btu price terms, the Oklahoma product was less costly because of its higher Btu rating and shorter travel distance.

The Council of Ozark Governors study encourages the formation of a consortium of area coal miners to guarantee the delivery of coal in the quantity and quality desired by the area utilities. The report also states that contracts between Oklahoma utilities and Wyoming coal operators were written in such a way as to permit a renegotiation if the condition of higher freight rates were to occur. Since freight rates from Wyoming have increased since 1982, the report suggests that the environment has become favorable for purchasing Oklahoma coal.

Economic Development Possibilities

From the evidence available to SSR it appears that the encouragement of Oklahoma coal development within a framework of compliance with high standards of air quality may be feasible through either or both of two routes:

- (1) the blending by utilities of high-sulfur Oklahoma coal with low-sulfur Wyoming coal;
- (2) encouragement of the mining of low-sulfur Oklahoma coal for local utility consumption.

A 1985 Ph.D. dissertation performed by Angel Martinez-Salazar at the Oklahoma State University Department of Agricultural Economics presents an input-output analysis estimating increases which would occur in Oklahoma employment and income in response to increases in the demand level for Oklahoma coal. Mr. Martinez-Salazar describes input-output analysis as "a useful tool for estimating the effect of a new development project on output, income, and employment for an entire regional economy" (see Table 12).

The Martinez-Salazar analysis begins by defining 5 million tons per year as the normal demand level for Oklahoma coal. Applying the input-output model he predicts that a 25% increase in demand would generate 1231 new Oklahoma jobs and new income amounting to 32.7 million dollars annually.* Further, a 50% increase in Oklahoma coal demand would stimulate 2584 new jobs with 70 million dollars in additional income.

Martinez-Salazar also focuses attention upon the question of the burning of Oklahoma coal by the state's utilities and writes that the Grand River Dam Authority's number two unit has been designed to use 33% Oklahoma coal. This will amount to about half a million tons annually of Oklahoma coal. "This fact, together with the possibility of using 10 percent of Oklahoma coal in the rest of the state coal-fired electric power units, will significantly increase the level of demand for Oklahoma coal" (Martinez-Salazar, p. 133).

The primacy of concern about economic development in Oklahoma has been stimulated partly by state revenue losses resulting from tax collection shortfalls following the collapse of the "oil boom" of the early 1980s.

*1984 current dollars

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In the current environment, the need for diversification of the state's industrial base has been frequently discussed in leadership circles. It is within this context that a final point in relation to the possible consumption of Oklahoma coal by the state's utilities should be mentioned: in 1982, according to the Ozark Council report, Oklahoma utilities paid over nine million dollars as severance tax to the state of Wyoming.

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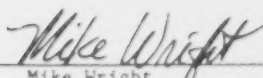

Mike Wright
Principal Researcher

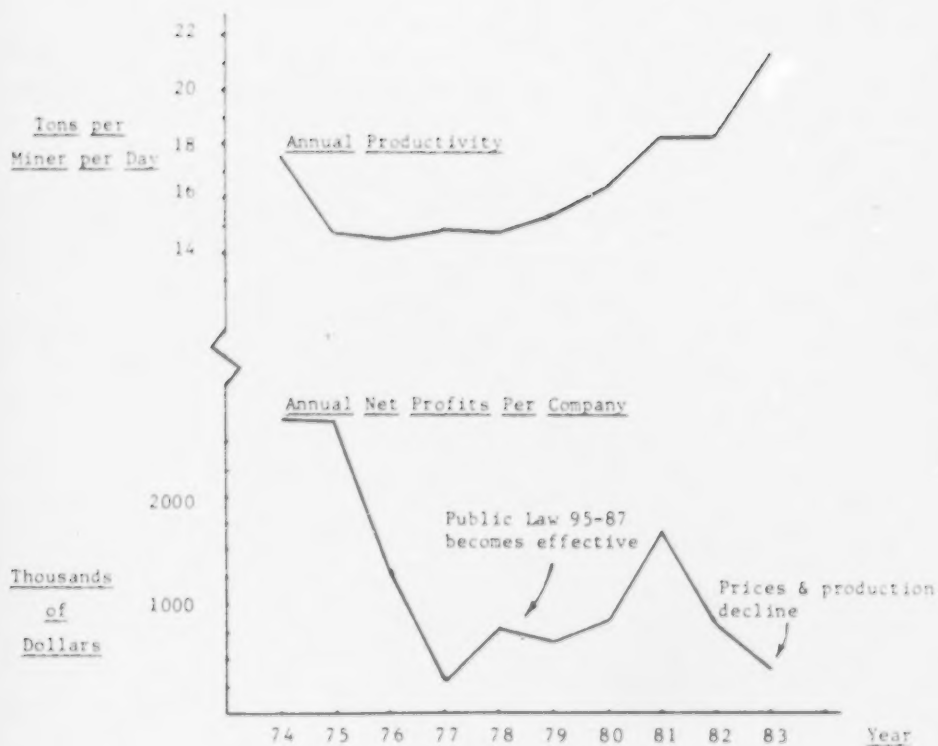
Table 1. ANNUAL PROFIT RATE, NET SALES, TOTAL NET PROFITS, AND
NET PROFITS PER COMPANY, FOR SELECTED U.S. BITUMINOUS
COAL COMPANIES, 1974-83

Year	# Companies	Profit Rate	Net Sales*	Total Net Profits	Net Profits per Company
1974	27	.075	782,033	58652.5	2173.3
1975	24	.158	330,218	52174.4	2173.9
1976	39	.087	469,162	40817.1	1046.6
1977	69	.019	859,727	16334.8	236.7
1978	60	.051	710,391	36229.9	603.8
1979	45	.042	560,072	23523.0	522.7
1980	47	.039	814,359	31760.0	675.7
1981	59	.069	1,151,679	79465.9	1346.9
1982	73	.026	1,758,079	45710.1	626.2
1983	74	.023	1,101,313	25330.2	342.3

*Net Sales, Total Net Profits, and Net Profits per Company are reported
in thousands of dollars.

Source: Annual Statement Studies, Robert Morris Associates, Philadelphia,
Pennsylvania, 1975-84

Figure 1. ANNUAL U.S. BITUMINOUS COAL INDUSTRY PRODUCTIVITY AND NET PROFITS PER COMPANY, FOR SELECTED COMPANIES, 1974-83



Source: Table 1; Table 2

Table 2. PRODUCTION, PRICES, WAGES, AND PRODUCTIVITY FOR U.S.
BITUMINOUS COAL AND LIGNITE INDUSTRY: 1972-1982

Year	Production ¹	Prices ²	Hourly Wages ³	Productivity ⁴		Total
				Underground	Surface	
1972	595.4	7.66	5.47	11.91	36.33	17.74
1973	591.7	8.53	5.98	11.66	36.67	17.58
1974	603.4	15.75	6.30	11.31	33.16	17.58
1975	648.4	19.23	7.50	9.54	26.69	14.74
1976	678.7	19.43	8.07	9.10	26.40	14.46
1977	691.3	19.82	8.26	8.69	26.59	14.84
1978	665.1	21.78	9.53	8.38	25.78	14.68
1979	776.3	23.65	10.29	9.24	27.03	15.33
1980	823.6	24.52	10.89	9.86	28.32	16.32
1981	818.4	26.29	11.93	10.62	31.11	18.08
1982	833.5	27.14	12.70	11.16	30.60	18.13
1983	778.0	25.85	13.77	13.18	33.60	21.19

1. Million short tons; source: Quarterly Coal Report, DOE/EIA - 0121 (Jan 85), Table B2
2. Current dollars/ton, F.O.B. mine price; source: Quarterly Coal Report (Jan 85), Table B5
3. Average hourly earnings for production workers; source: Employment and Earnings, Bureau of Labor Statistics, U.S. Department of Labor, various volumes and supplements from 1973 through 1984
4. Average tons per miner per day; source: Quarterly Coal Report (Jan 85), Table B5

Table 3. U.S. COAL PRICES BY MINING METHOD, FOR SELECTED YEARS

<u>Year</u>	<u>Underground*</u>	<u>Surface*</u>	<u>Ratio S/U</u>
1978	30.94	16.53	.53
1980	33.50	18.78	.56
1982	35.78	21.46	.60
1983	34.47	20.68	.60

* Mine prices: /dollars/ton

Sources: Bituminous Coal and Lignite Production and Mine Operations -- 1978
DOE/EIA - 0118(78), p. 4

Coal Data: A Reference, DOE/EIA - 0644(82), p. 57

Coal Production 1983, DOE/EIA - 0118(83), pp. 30, 43

Table 4. RECLAMATION COSTS PER TON OF COAL, AT VARYING COALBED THICKNESSES,
FOR 1978 TO 1984 INTERVAL

Thickness of coal (inches)	Estimated Production* Per Acre	Cost per Ton of Coal, if Reclamation Cost Is:			
		\$1200/Acre	\$1800/Acre	\$2400/Acre	\$3000/Acre
12	1440	\$.83	1.25	1.67	2.08
24	2880	.42	.63	.83	1.04
36	4320	.28	.42	.56	.69
48	5760	.21	.31	.42	.52
60	7200	.17	.25	.33	.42

*Production is measured in tons; assumed rate of recovery is 80% of original coal, or 1440 tons per acre-foot

Sources: Range of estimates for reclamation cost/acre provided by Oklahoma Department of Mines, Oklahoma City, Oklahoma

Production per acre estimates provided by Oklahoma Geological Survey (University of Oklahoma), Norman, Oklahoma

Table 5. 1982 OSM VIOLATIONS PER 10 INSPECTIONS, INSPECTIONS PER MINE, AND PERCENT OF PRODUCTION FROM THIN SEAMS, FOR SURFACE MINING STATES - IN THE 1 TO 6 MILLION-TON PRODUCTION RANGE

<u>State</u>	<u>Surface¹ Production</u>	<u>% Production² from Thin Seams</u>	<u>Insp./Mine³</u>	<u>Violations/10 Insp.</u>
Kansas	1.401	100%	3.2	1.1
Maryland	1.865	21%	6.6	.6
Tennessee	2.769	33%	13.0	5.8
Washington	4.161	0%	3.0	5.0
Oklahoma	4.712	90%	8.2	1.4
Missouri	5.336	69%	2.4	1.2

1. Millions of tons

2. Refers to coalbed thicknesses of less than 25 inches

3. Excludes mines producing less than 10,000 tons during the year

Sources: Annual Report of the Office of Surface Mining (FY 1982)
Department of the Interior, p. 25

Coal Data: A Reference
DOE/EIA - 0064(84), pp. 30-31

Coal Production 1982
DOE/EIA - 0118(82) pp. 12-14

Tennessee Department of Mines

Table 6. TOTAL OKLAHOMA COAL PRODUCTION AND PRODUCTION BY THE
LARGEST THREE COMPANIES, FOR SELECTED YEARS

	<u>Total State Production*</u>	<u># Producers</u>	<u>Top Three Production</u>	<u>% Top 3</u>
1978	5,428,678	45	1,954,680	36%
1981	5,728,461	34	1,972,172	34%
1983	3,635,890	23	1,915,701	53%
1984	4,313,273	23	2,146,035	50%

*tons

Source: Oklahoma Department of Mines
Oklahoma City, OK

Table 7. SURFACE PRODUCTION: ACRES MINED AND ACRES RECLAIMED IN 1978,
FOR STATES IN THE 1 TO 6 MILLION-TON PRODUCTION RANGE

	<u>Acres Mined</u>	<u>Production*</u>	<u>Surface Production</u>	<u>Acres Reclaimed</u>
Kansas	472	1.226	100.0	378
Maryland	900	2.186	83.6	1,100
Missouri	901	5.079	89.7	1,339
Oklahoma	2,272	5.060	83.4	2,570
Tennessee	1,077	3.711	63.1	920
Washington	136	4.708	100.1	140

*Millions of tons; production is from reported acreage data.

Source: Bituminous Coal and Lignite Production and Mine Operations -- 1978
DOE/EIA - 0118(78), Table 35

Table 8. 1982 OSM MINE INSPECTION RATES, VIOLATION RATES, AND INDUSTRY CONCENTRATION
DATA FOR THE TOP FIVE STATES IN SURFACE COAL PRODUCTION

	# Operators	Production/Operator*	% Small Mines**	Inspections/Mine	Violation Rate***
Wyoming	27	3966.1	8%	1.1	0
Texas	11	3165.3	0%	1.1	1.6
Indiana	99	304.6	52%	15.4	3.9
Kentucky	764	95.7	76%	5.6	2.4
Pennsylvania	585	72.5	74%	8.9	.7

*Thousand tons -- surface production

**Mines producing less than 100,000 tons during the year were considered small mines; mines producing less than 10,000 tons were not counted.

***Violations per 10 inspections

Sources: Annual Report of the Office of Surface Mining (FY 1982)
Department of the Interior, p. 23

Coal Production 1982
DOE/EIA - 0118(82), pp. 12-14, p. 56

Table 9. 1982 OSM INSPECTIONS PER MINE AND PERCENT MINES IN SMALL PRODUCTION RANGE, FOR ELEVEN SURFACE-MINING STATES

	<u>Percent Small Mines</u>	<u>Inspections per Mine</u>
	<u>Group One</u>	
Tennessee	85%	13
Kentucky	76%	5.6
Maryland	75%	6.6
Pennsylvania	74%	8.9
Oklahoma	65%	8.2
Indiana	52%	15.4
	<u>Group Two</u>	
Missouri	29%	2.4
Kansas	17%	3.2
Wyoming	8%	1.1
Washington	0%	3.0
Texas	0%	1.1

*Mines producing less than 100,000 tons during the year were considered small mines; mines producing less than 10,000 tons were not counted.

The product-moment correlation between percent small mines and inspections per mine is +.72 at the .012 significance level.

The means for Group 1 and Group 2 are 9.61 and 2.16 respectively; the t-test significance level is .024.

Sources: Annual Report of the Office of Surface Mining (FY 1982)
Department of the Interior, p. 23

Coal Production 1982
DOE/EIA - 0118(82), pp. 12-14, p. 5

Table 10. QUANTITY AND AVERAGE CHARACTERISTICS OF OKLAHOMA COAL RECEIVED BY OUT-OF-STATE UTILITIES IN 1983, BY STATE

	<u>Quantity</u> (thous. tons)	<u>Btu/lb.</u>	<u>Wt. % Ash</u>	<u>Sulfur Emission</u> (lbs./mil. Btu)	<u>Delivered Price</u> (per mil. Btu)
Florida	253.3	13,230	6.9	1.05	\$1.91
Iowa	17.8	12,500	8.9	7.04	1.62
Kansas	154.3	12,402	9.8	4.19	1.24
Missouri	798.5	11,512	15.2	7.99	1.62
TOTAL	1223.9	11,994	12.7	5.84	1.64

Table 11. QUANTITY AND AVERAGE CHARACTERISTICS OF WYOMING COAL RECEIVED IN 1983 BY OKLAHOMA ELECTRICAL PLANTS

	<u>Quantity</u> (thous. tons)	<u>Btu/lb.</u>	<u>Wt. % Ash</u>	<u>Sulfur Emission</u> (lbs./mil. Btu)	<u>Delivered Price</u> (per mil. Btu)
Public Service NE	2816.0	8469	5.3	1.01	\$1.90
OG&E Muskogee	2790.3	8864	4.9	.71	1.52
OG&E Sooner	2046.7	8860	4.9	.73	1.58
Western Farmers	1495.8	8239	6.1	1.18	2.05
GRDA 1	1522.4	8214	5.6	.89	1.76
TOTAL	10,671.1	8579	5.2	.93	1.73

Source: Cost and Quality of Fuels for Electric Utility Plants 1983, DOE/EIA - 0191(83), Tables 26, 48, 57, and 59

Table 12. OKLAHOMA EMPLOYMENT AND INCOME INDUCED
AT VARIOUS LEVELS OF DEMAND FOR COAL

	<u>Normal Demand*</u>	<u>25% Increase</u>	<u>50% Increase</u>
Jobs			
Coal Mining	1455	1929	2239
Other	3996	4753	5796
Total	5451	6682	8035
Income**			
Coal Mining	69,423.3	82,687.7	98,897.6
Other	75,976.6	95,408.6	116,529.1
Total	145,399.9	178,096.3	215,426.7

*5 million tons per year

**1984 dollars (thousands)

Source: Regional Impacts of Coal Mining in Eastern Oklahoma, by
Angel Martínez-Salazar (unpublished dissertation, Oklahoma
State University, 1985), Tables XII and XIII

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Senator NICKLES. Ms. Townley, I appreciate your comments and I certainly agree with your final statement that it is the State's intentions. You mentioned that you were in the process of working on a phased program where the State would take or resume total control of inspection and enforcement of the mines. I didn't hear all your dates. I think you mentioned an August date and a November date. Do you mean by November of this year the State would be in total control of inspection and enforcement of all the mines in Oklahoma?

Ms. TOWNLEY. Yes, that's correct.

Senator NICKLES. You have notified OSM of that intention or is that done by application?

Ms. TOWNLEY. Yes, sir. What we did originally we submitted both plans at the end of October of 1984. Then OSM responded to us in late January of this year. We have then rewritten and worked on answering the deficiencies in changing programs within the program to meet what they thought were problems. So now we have resubmitted this month, well, last month in May, and this notice should be published in the Federal Register.

I believe it was in November that the Governor petitioned OSM, November 1984, Gov. George Nigh petitioned OSM to return authority to the State of Oklahoma.

Senator NICKLES. Mr. Christensen, when did the OSM take over control of the inspection and enforcement in Oklahoma?

Mr. CHRISTENSEN. April 30, 1984.

Senator NICKLES. April 30, 1984, and the Governor or Ms. Townley made the request in what, November of 1984, to regain control. What is the status of that request as far as OSM is concerned? You said in your opening statement that you hoped the State would regain primacy as far as inspection and enforcement is concerned.

Mr. CHRISTENSEN. As far as we are concerned we now are reviewing the plans that they have submitted to us again to make sure that they are adequate and actually have a program that can do the job. Obviously we are concerned that when they finally take the program back, that they continue to do it. We don't want to come back 2 months after they have it and take it back again because of inadequacies or they can't do the job.

So we want to help work with them and make sure that by the time they take over they can actually take it over and they have been trained, they have a staff—an adequate staff—and they have the program in place to do the job.

Senator NICKLES. How many States, regulatory programs has OSM actually taken over?

Mr. CHRISTENSEN. Completely? We took over Tennessee and partially Oklahoma.

Senator NICKLES. Any other States?

Mr. CHRISTENSEN. We do for several other States like Washington and Georgia who have never really had primacy because their coal mining just isn't that big in the State to warrant that they would have a program.

Senator NICKLES. So they don't have their own State department of mines?

Mr. CHRISTENSEN. No.

Senator NICKLES. And never have?

Mr. CHRISTENSEN. Not as far as OSM goes.

Senator NICKLES. What was so different or bad in Oklahoma that caused you to say we have to take over?

Mr. CHRISTENSEN. Do you mind if I have the historical historian here to answer that?

Senator NICKLES. Mr. Close.

Mr. CLOSE. Mr. Chairman, we found that there was a wide variety of deficiencies principally in inspection and enforcement.

Senator NICKLES. When you say deficiencies, would you clarify that.

Mr. CLOSE. Yes, sir, I will add to that. Inspection frequencies were not being met and violations were not cited in many instances resulting in some sites going for long periods of time with major environmental problems, some of which were going off the mining site and affecting lands other than the mine itself. Permits were inadequate in that required plans to prevent environmental deterioration were not always included.

The reason we came to the point of partial Federal takeover was because we had tried and tried and tried to get these corrected. Our first step is always to work with the State to get the deficiencies remedied. We were unsuccessful in doing that, and finally concluded that we would continue to be unsuccessful until we took dramatic action.

Senator NICKLES. The law was passed in what, 1977?

Mr. CLOSE. That's correct.

Senator NICKLES. Ms. Townley mentioned that the State of Oklahoma passed legislation, I'm guessing, in 1978 or 1979. Was the State of Oklahoma's legislation inadequate or was the enforcement inadequate, in your opinion?

Mr. CLOSE. The legislation was adequate—it was the enforcement of it which was the problem.

Senator NICKLES. We will have many people testify shortly that they feel like enforcement, current enforcement by OSM is over zealous. Do you have any comment on that, either of you?

Mr. CHRISTENSEN. Mr. Chairman, I think it could very well be, and we're very anxious to hear that, and if that is the case, I think that we will certainly try to resolve those issues.

Senator NICKLES. Let me ask you a question. You mentioned that the State, because of certain deficiencies, wasn't doing a good enough job in complying with the laws with respect to environmental concerns, so the Federal Government had to take over. How is the State doing now? Or, how close are we?

Mr. CLOSE. Most of what we have been reviewing in the way of State performances is, of course, in permitting, and we have noticed very substantial improvements. Those permits which are currently being worked on, and being issued are greatly improved over those being issued a year ago. The progress is very encouraging.

As far as when it might actually occur, as Ms. Townley mentioned, we do have the inspections, enforcement and permit plans in, and as the director mentioned, we are reviewing them. We are also printing up copies of those to make them available for public review, during the public comment period which we hope to open shortly.

Senator NICKLES. On the timeframe that Ms. Townley mentioned, I think she was looking at November of this year. Do you feel that this is reasonable or possible?

Mr. CLOSE. It's possible, but I think it's a little early to make specific comments on that now. I would hope that we could do it by then.

Senator NICKLES. Right now, OSM is doing all the inspection and the enforcement.

Mr. CLOSE. We are doing all inspection and enforcement on notices of violations, and cessation orders which we issue. There are some enforcement actions which were initiated by the State, prior to OSM coming in, and the State is responsible for pursuing those.

Senator NICKLES. And, you mentioned the State was doing a better job in permitting. By that, do you mean the State is not giving permits until all of the so-called violations are taken care of. Is that what you mean by a better job of permitting?

Mr. CLOSE. That's one aspect. More importantly the State is making a much more careful review of all of the requirements. Where deficiencies are discovered, the State personnel are going back to operators and working with them, to get the deficiencies and the permit application covered, so that a permit, once issued, can be expected to cover all of the environmental requirements and result in mining which is environmentally acceptable.

Senator NICKLES. Mr. Close, is it your opinion OSM is working with the miners or against the miners?

Mr. CLOSE. I hope we are working with them, sir.

Senator NICKLES. I hope that you will stay around for some of the statements that will be made shortly.

Mr. CLOSE. I certainly will, and I do look forward to them. I understand we are not universally popular, no regulator ever is.

Senator NICKLES. Well, I would agree with that. Again, I want you to be here. I think that it's important that you be here. I think it's important when the front page of the paper talks about threats against coal witnesses, or people are afraid they're going to be fined. I happen to have Mr. Christensen send me a copy of all of the fines that have been levied in the State, or against our operators, and I'm concerned about it.

We're talking about—I happen to be a manufacturer and I'm not a mine operator, so I visited several mines, but I'm not an expert in the field. But, I do know something about working with people. When I look at this list of fines, and I see all sizes of fines. When I say all sizes, I'm not talking about hundred dollar fines. I'm talking about almost all of them in the thousand dollar plus category, and then I see umpteen NOV's—what is that?

Mr. CLOSE. Notice of Violation.

Senator NICKLES. Notices of violations, \$22,000, and there is a lot of them. Then, I start to question, and I say, well, wait a minute, are we trying to make that sure we comply with Federal statutes, and have a clean environment, or are we trying to hit people over the head, and put them out of business. That's a very serious concern. Ms. Townley, how many operators do we have in the State of Oklahoma? I hope we can keep the audience from not making responses. You're going to hear some things today you like, and some things you don't like. I don't feel intimidated in any way, but I

don't want any of our panelists to feel intimidated in any way. This is a congressional hearing, and I really want the facts to come out today. I have had meetings, and I've heard people tell horror stories. This is a congressional meeting, and this is important. What is said here today has to be the truth, and we've heard some things that really bother me a lot, and I want to get to the bottom of it.

So again, we might try and keep our applause or boos or whatever down, because you're going to hear both before we're finished, I'm afraid. But, how many operators, Ms. Townley, are active today in the State of Oklahoma? How many people are producing coal in the State of Oklahoma?

Ms. TOWNLEY. I would have to say less than 20.

Senator NICKLES. Mr. Wright, I will acknowledge that I have read the statement that you have submitted and I think in your statement, it said something like 17. I wasn't going to put that in my record or in my statement, because I don't know that we have that many active miners.

Mr. WRIGHT. 17 was the reference to coal operators who had been operating in this State in the later seventies, and early eighties, but later declared to be insolvent in bankruptcy.

Senator NICKLES. How many do you think we have active today?

Mr. WRIGHT. Well, the most recent figure I have on that is from 1984 and the number was 23, but from what I've heard around the department since then, the number has diminished since then. I suggested a figure of less than 20 to Gayle.

Senator NICKLES. Could you provide that for the record?

Ms. TOWNLEY. Yes, sir; we can.

Senator NICKLES. Could you also give us the number that we had, say back in 1977 and maybe another spot check into 1980, to kind of compliment that? You don't have to do it right now. Has there been a substantial reduction in the number of active miners and mining companies in the State of Oklahoma?

Ms. TOWNLEY. Yes, sir; I would say they have declined. We have in 1978, we had 45.

Senator NICKLES. 1978 we had 45?

Ms. TOWNLEY. Yes, sir.

Senator NICKLES. And today, we're talking about, you say less than 20.

Ms. TOWNLEY. Yes, sir; that could be—well, in other words, they have viable acreage, and they could go out there and start mining on that acreage.

Senator NICKLES. So, that's broader than the actual people who are actually—

Ms. TOWNLEY. That's broader than the actual people who are digging.

Senator NICKLES. What I'm interested in, and maybe in the course of the hearing we will see if we can't find it, is how substantially these numbers have declined. Again, that concerns me. It concerns me, Mr. Christensen, that we have a lot of companies listed here that have been fined pages worth, not one or two, but pages. I visited some of these mines and I'll grant you in the past there have certainly been some violations, but some of the violations individuals have shown me, you're looking at a \$1,500 fine, for Mickey Mouse violations which look a lot like harassment

rather than efforts to get operators to comply with the law. I'm very concerned about this. I very much hope and think that the people who work for the Federal Government are working with and for the people, and not dictating down to them in order to put people out of business resulting in thousands of lost jobs. I think that's awfully important.

I hope Mr. Close, you'll stay by, because the miners can say this much better than I can, but again, I look at some of these fines, and some people have pages, not one or two, but pages of fines that are astronomical. In some of these, a lot of people are telling horror stories, and again, I'm not an expert in the field, but these are very reputable companies telling these stories. Maybe these fines are justified. I don't know, I'd like to find out. We hope to get into that today. When people that I respect say no, this is a very reputable company, and they do a good job, and they cleanup, and they do top quality reclamation work, which I think is good, and then when you turn around and see that they're being harassed, or punished or fined out of business, that is a real serious concern, and I don't think that's what the law intended. Is the law set up to where it's supposed to be that strict?

Mr. CLOSE. Sir, part of that does come directly from the law, especially those large fines. Those are penalties assessed as a part of failure-to-abate cessation orders. Once a failure-to-abate cessation order is issued, and they're issued because the violations covered by a notice of violation have not been abated, there is a mandatory penalty set forth by the act itself of \$750 per day. We have capped that to 30 days, so that's \$22,500 per violation. It gets very expensive very quickly, as you have observed.

Senator NICKLES. Can you have a \$22,500 fine then for somebody having the wrong size sign, that maybe needs to be moved 10 yards?

Mr. CLOSE. I certainly hope we haven't issued any of those, because that would be inappropriate.

Senator NICKLES. Stay around.

Mr. CLOSE. I will.

Senator NICKLES. Mr. Christensen, Mr. Close or Ms. Townley, either one, do you think the statute as passed by Congress in 1977 was too strict? Is part of the problem we find here overzealous enforcement, or do we just have regulators strictly enforcing the laws that are on the books?

Mr. CHRISTENSEN. That's a hard question for us to answer right now, not knowing the complete legislative history. There are people out there who probably remember why the law was passed the way it is. There may have been a lot of compromises when it was passed, at the time. Coming from the Reagan administration, it's hard to like Federal regulatory agencies, much less run one, but we are trying to obey the law and enforce it, in as fair a manner as we can. To actually come out and say that the law is correct, or not, is a little difficult to do.

Senator NICKLES. Mr. Terrell of my staff informed me, and I just wanted to ask him how many hundreds of pages of regulations were issued to basically come up with enforcement procedures to comply with the statute. About 500 pages in the Federal Register,

and so it may well have been, there may be some areas that need to be examined there. Mr. Close, do you want to tell me?

Mr. CLOSE. You might recall that the initial regulations were changed substantially under the leadership of Secretary Watt. A lot of those were challenged in court and upheld. They're many that have been remanded to us by the court to change. We are going through some fairly extensive rulemaking and that's a problem and something that happens all the time. You just can't please everyone with the regulations that we come up with.

Senator NICKLES. Ms. Townley, you mentioned the legislation just passed, and you mentioned that you what, almost have 4 or 5 times as many employees that you had back in 1977. Does the State have enough employees or have enough statutory guidelines for the State to be able to take over control?

Ms. TOWNLEY. Yes, sir; we believe we do. We have, like everyone, well, you always need more people, but we have enough to run the program.

Senator NICKLES. To not only issue the permits, but also to do the enforcement and inspections of the mines as well?

Ms. TOWNLEY. We have requested some more legal assistance from the Attorney General's Office, and we also are limited by State statute to have one attorney on staff, and we have asked the legislature to consider changing that, to allow us to have more legal assistance in house.

But, in answer to your previous question about the statutes, or rules and regulations as far as the statutes, are very clear, the problem is the regulations, and the regulations were written for someone who was really bad, and for someone who is trying, you know, who is a good operator, it does really penalize them. So, I think—I had proposed at one point, you know, to OSM that I thought there should be some sort of provisions in the regulations, but I guess the law doesn't allow us to do that.

Senator NICKLES. But, you believe by November, the State Department of Mines would be ready to take over inspection and enforcement?

Ms. TOWNLEY. Yes, sir.

Senator NICKLES. One of the big complaints that I heard for the last couple of years, prior to the Federal takeover of the inspection and enforcement was the inequality at the State level. I heard that some people were inspected repeatedly, and other people were not. Permits would be issued to some people easier than others. Do you believe if the State were to take over by November that the State could manage it in a fair and equitable manner to all the mining operators in the State of Oklahoma?

Ms. TOWNLEY. Yes, sir; we have instituted good management practices, and we have developed a number of guidelines and procedures to be followed. We are still in the process of doing that, right now, and we are currently reviewing guidelines on revegetation requirements and have sent those out for review to interested parties. So, we are proceeding to try to eliminate any unequal application of the law.

Senator NICKLES. In your discussions with OSM, I know recently you were in Washington, DC, discussing this and other issues with

them. Have you found OSM to be cooperative, in trying to work with the State, or have they been dictatorial?

Ms. TOWNLEY. No, sir; they have been cooperative. The most dictatorial document, of course, is the Federal Register 733, which the State has taken exception with, but we are very hopeful that that can be resolved.

Senator NICKLES. I will conclude with the same question I asked Mr. Christensen. Do you think that the notice that was in the Federal Register, and I believe that was 733, that you have in front of you, Mr. Close, was too dictatorial?

Mr. CLOSE. This is a copy of the entire regulations.

Mr. CHRISTENSEN. 733 is the part of the regulations that allows us to come in and take over a program.

Senator NICKLES. I see. As far as the entire regulations, encompassing regulations, in the enforcement of the mines, Ms. Townley, do you think that possibly they are too strict, or maybe a few individuals are being overzealous in enforcement?

Ms. TOWNLEY. I think that there could be more guidelines developed by OSM, rather than trying to turn them into rules and regulations.

Senator NICKLES. Possibly a little more common sense in enforcing some of these regs?

Ms. TOWNLEY. Yes, sir.

Senator NICKLES. Mr. Wright, did you want to add anything? I have read your study, as well.

Ms. TOWNLEY. I asked Mr. Wright to come here today, to comment on the economic review that he did for the Department.

Senator NICKLES. I appreciate it, and if you want to make a quick comment.

Mr. WRIGHT. Well, I'm available to read my statement into the record.

Senator NICKLES. In the interest of time we will just enter your statement into the record. I have read your statement, for your information, and I appreciate it, and I think you made some very good points about the need to burn Oklahoma coal. I agree with that, and I hope that we have some utilities as well that are looking at that, and I hope they will be able to take off and do it.

Thank you very much. All of our first panelists, I appreciate your cooperation with the committee and also, your willingness to attend and listen to some of the dialog which will follow. Thank you very much.

Mr. CHRISTENSEN. Thank you, Mr. Chairman.

Senator NICKLES. Our next panel, and I would appreciate it if all of the panelists could come up at the same time. We have Roger Dahlgren, who is chairman of American General Contractors, Coal Producers Committee, Matt Richardson, vice president of P&K Coal Co., and Frank Podpechan, president of Sweetwater Coal Co., Cleo Watts, president of HFCO, Inc., and Virgil Tipton from McNabb Co. Mr. Dahlgren, do you care to be first?

STATEMENT OF ROGER DAHLGREN, PRESIDENT, K&R COAL CO.

Mr. DAHLGREN. I would like to thank you for inviting us to participate. I would like to read my statement into the record.

My name is Roger Dahlgren. I am president of the K&R Coal Co. which operates a strip mine in Haskell County and whose offices are in Oklahoma City. I am also chairman of the Association of Oklahoma General Contractors Coal Producers Committee which represents seven Oklahoma coal operators who produce 60 percent of all coal mined in Oklahoma.

As spokesman for our committee, I would like to present for your consideration some of the coal industry's problems. These problems are the result of unrealistic policies set by State and Federal coal regulatory authorities. Our precious coal industry is being led to bankruptcy by State and Federal governments. The Government agencies are aiding in the demise of this industry, through their lack of experience and knowledge about coal mining techniques and procedures. They are accomplishing this through their interpretation beyond the intention of the law and the rules and regulations. While this philosophy ultimately insures the security of the authorities' jobs, it is, in fact, counterproductive to the industry, and may well prove fatal.

I must question the regulatory actions and accomplishments made by OSM within the State in recent years. Evidence obtained from a May 1, 1985 study conducted by the Scientific Social Research Co. of Norman, OK, indicates beyond a doubt that in comparison to producers within other states where operations and mining conditions are identical to that of Oklahoma, the Office of Surface Mining has aggressively attacked and blatantly discriminated against individual Oklahoma coal producers.

I am able to reinforce this statement with data from OSM's 1982 violation record, which was compared to all other States whose surface coal production was between 1 and 6 million tons per year. These States include Oklahoma, Kansas, Maryland, Tennessee, Washington, and Missouri.

Records show that OSM carried out 8.2 inspections per mine in this State during 1982. Only Tennessee, which is also under Federal control, had the stronger vulnerability at 13 inspections per mine-site. Of the six States surveyed, the range of violations per every 10 inspections ranged from 0.6 to 5.8, with Oklahoma having a violation rate of 1.4 per every 10 inspections. Although three of the States had lower rates than Oklahoma, only Oklahoma and Kansas shared the disadvantage of having all their coal mined from thin seam with a thickness of 25 inches or less. These findings show that even in 1982, with OSM's high rate of inspections per mine-site, and Oklahoma's low rate of violations per inspection, the Federal regulatory agency had already targeted the Oklahoma coal operator for harassment and overly strict enforcement policies, which would be followed by total domination of regulatory enforcement with the May 1984 takeover of the inspection and enforcement branch of the Oklahoma Department of Mines.

Many of us are the same operators who have been around since the mid-1970's or before when there were no permitting and enforcement programs such as those that exist today. However, the majority of us are staffed now with mining engineers, geologists, surveyors, experienced mine superintendents, accountants, businessmen, attorneys, et cetera. This is evidence of our willingness to comply with the new regulations, if only the regulatory authorities

would be so cooperative and standardize the regulations and their enforcement of them.

We can no longer tolerate being enforced and reviewed by the myriad of groups and agencies with their million different ideas and dreams, often conflicting, always demanding. We can no longer train the regulatory authorities in coal mining practices and procedures which they should know thoroughly in order to make this system work.

We are well aware of the laws and we do our best to mine the coal and reclaim the land according to the vague language of the stated rules and regulations. We are also human and we cannot be absolutely perfect because we have to operate under many conditions that are beyond our control, such as weather, market, labor, et cetera.

There have been hundreds of times when we were answered by the regulatory authorities that they were shorthanded, or they forgot, or someone was sick. But at all times they expect the operators to be perfect, and never allow us any reasoning on any issue. We are being issued violations and assessed heavy penalties for anything that goes wrong at the mine, whether within or beyond our control. We are even being fined in anticipation of violations that have the potential of occurring.

We can no longer tolerate and comply with the complex and ever-changing regulatory rules and regulations, and individual office personnel making policies or interpreting regulations at their whim.

We are sandwiched between State and Federal authorities, both of whom hesitate to make these critical and timely decisions which every day affects our success or failure. Each agency is fearful of making commitments because it is unsure how the other agency will interpret the ambiguous rules and regulations they have created and are obliged to somehow enforce.

I am sure that each coal operator has his own horror stories and specific problems that they will present to you, and I would like to mention a few of mine:

One, K&R Coal Co. submitted a coal-mining permit application to the Federal Government, Office of Surface Mining [OSM] to mine the Federal coal in Haskell County, OK. It is now 3 years since the application was submitted. I have submitted at least a dozen documents in support or in response to their deficiencies in that application. I have been told by OSM at least a dozen times that the application is complete and adequate. But a week, a month, and then a year later I was told there were problems. Four different groups reviewed my application, one after another, from beginning to end. In addition, a consultant firm—and I might add the first consultant firm was paid \$50,000 to review this application. I am not sure what the second one will cost us. Basically, I still do not have my permit.

I might add, Senator, that my wife and I have invested between \$500,000 and \$600,000 in the lease application, or acquiring the lease and acquiring the property in investment money, and yet, we do not have the permit to mine the coal. We have not touched a blade of grass yet.

Two, Oklahoma permanent rules and regulations section 816.106 states that when rills and gullies deeper than 9 inches form, the rills and gullies shall be filled, graded, or otherwise stabilized. This section does not specify when they should be corrected. Many factors are involved in the timing of correcting rills and gullies such as weather, planting seasons, et cetera. There have been times when we were issued violations for rills and gullies 2 or 3 days after a heavy rain. Why—because the ground was so wet that it could not support the equipment activities necessary to correct the problems.

Was I negligent? Was my operation the cause of this violation, or was it simply an act of God beyond my control as stated in the inspector's report? I am positive that my fellow operators have received the same type of violations at their operations during the wet seasons.

Three, I have presented to you problems confronted by my company in the areas of permitting and enforcement.

I would like to tell you my sad story about the reclamation bond release which has been a major disaster at the State and Federal level. I will not get into details of this issue except the legal notice [ad] that must be published in the newspaper for public notification. This is the smallest and least technical part of the bond release application. I submitted my bond release legal notice to the Office of Surface Mining for their approval. I received deficiencies, letters, and telephone calls requiring me to add more and more information to that ad.

It took me approximately 4 months before my legal notice was approved for publications. By then, my ad covered an entire legal size page, and still more information was demanded by OSM. I began to feel like Sherlock Holmes, trying to discover what they wanted, based on the meager clues they would occasionally release.

If the OSM staff were experienced, or at least had common sense, they would have provided an ad form that could be filled out and published. Instead, they wasted many valuable days reviewing and agonizing over a one-page document each time finding a new modification or addition. They should have a straightforward checklist of required information to be included in the legal notice, thus facilitating their own work, and taking the irritating frustration out of such a simple procedure.

We, finally, did get the bond released, just this week, but I have to say I have had two men on that job for now, for a year, making sure and maintaining the property. That alone, that cost has got to \$75,000 just off the top of my head.

I would now like to take a moment to touch upon another troublesome problem which faces our coal operator. I'm speaking of lack of market for our product.

At the present time, utilities within the State consume little or no Oklahoma mined coal, with the exception of a few utilities burning small quantities of the local product. The States' utility companies consistently argue that Oklahoma coal possesses high sulfur characteristics which is incompatible with current air quality standards. It is true that in most instances Oklahoma coal does contain a higher level of sulfur, but it is also true that Oklahoma coal contains a higher Btu rating, therefore, a mixture of Wyoming

and Oklahoma coal would produce a product that is higher in Btu and also meets the air quality standards. Although Oklahoma coal is more expensive than the Wyoming coal, a recent increase in rail rates has brought Oklahoma coal to a competitive scale with our Wyoming counterparts. It should also be mentioned that Oklahoma has considerable minable reserves of low sulfur coal containing less than 1 percent sulfur. A 1983 study by S.A. Friedman of the Oklahoma Geological Survey states that approximately 68 million tons of low sulfur coal are presently minable in Oklahoma.

Our committee would like to make several recommendations which we feel would vastly improve the climate of the coal mining industry in Oklahoma.

Senator NICKLES. Mr. Dahlgren, I wonder if you can—we're trying to keep fairly close on our schedule so I can get all of the panelists. I see you've got several recommendations, and could you summarize those?

Mr. DAHLGREN. Why don't we just kind of leave this for the record.

Senator NICKLES. OK; I will put those in the record, and we will get to them in the questions. Thank you very much.

[The prepared statement of Mr. Dahlgren follows:]

My name is Roger Dahlgren. I am President of the K & R Coal Company which operates a strip mine in Haskell County and whose offices are located at 2525 Northwest Expressway in Oklahoma City. I am also Chairman of the Association of Oklahoma General Contractors Coal Producers Committee which represents seven Oklahoma coal operators who produce 60% of all coal mined in Oklahoma.

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I must question the regulatory actions and accomplishments made by OSM within the state in recent years. Evidence obtained from a May 1, 1985 study conducted by the Scientific Social Research Company of Norman, Oklahoma, indicates beyond a doubt that in comparison to producers within other states where operations and mining conditions are identical to that of Oklahoma's, the Office of Surface Mining has aggressively attacked and blatantly discriminated against individual Oklahoma coal producers.

I am able to reinforce this statement with data from OSM's 1982 violation record, which was compared to all other states whose surface coal production was between one and six million tons per year. These states include Oklahoma, Kansas, Maryland, Tennessee, Washington and Missouri.

Records show that OSM carried out 8.2 inspections per mine in this state during 1982. Only Tennessee, which is also under Federal control, had a stronger vulnerability at 13 inspections per mine site. Of the six states surveyed, the range of violations per every 10 inspections ranged from .6 to 5.8, with Oklahoma having a violation rate of 1.4 per every 10 inspections. Although three of the states had a lower rate than Oklahoma, only Oklahoma and Kansas shared the

disadvantage of having all their coal mined from thin seam with a thickness of 25 inches or less.

These findings show that even in 1982 with OSM's high rate of inspections per mine site and Oklahoma's low rate of violations per inspection, the Federal regulatory agency had already targeted the Oklahoma coal operator for harassment and overly strict enforcement policies which would be followed by total domination of regulatory enforcement with the May, 1984 takeover of the inspection and enforcement branch of the Oklahoma Department of Mines.

Many of us are the same operators who have been around since the mid-70's or before when there were no permitting and enforcement programs such as those that exist today. However, the majority of us are staffed now with mining engineers, geologists, surveyors, experienced mine superintendents, accountants, businessmen, attorneys, etc. This is evidence of our willingness to comply with the new regulations, if only the regulatory authorities would be so cooperative and standardize the regulations and their enforcement of them.

We can no longer tolerate being enforced and reviewed by the myriad of groups and agencies with their million different ideas and dreams, often conflicting, always demanding. We can no longer train the regulatory authorities in coal mining practices and procedures which they should already know thoroughly in order to make this system work.

We are well aware of the laws and we do our best to mine the coal and reclaim the land according to the vague language of the stated rules and regulations. We are also human and we cannot be absolutely perfect because we have to operate under many conditions that are beyond our control, such as weather, market, labor, etc.

There have been hundreds of times when we were answered by the regulatory authorities that they were short-handed, or they forgot, or someone was sick. But at all times they expect the operators to be perfect, and never allow us any reasoning on any issue. We are being issued violations and assessed heavy penalties for anything that goes wrong at the mine, whether within or beyond our control. We are even being fined in anticipation of violations that have the potential of occurring.

We can no longer tolerate and comply with the complex and everchanging regulatory rules and regulations, and individual office personnel making policies or interpreting regulations at their whim.

We are sandwiched between State and Federal authorities, both of whom hesitate to make these critical and timely decisions which every day affects our success or failure. Each agency is fearful of making commitments because it is unsure how the other agency will interpret the ambiguous rules and regulations they have created and are obliged to somehow enforce.

I am sure that each coal operator has his own horror stories and specific problems that they will present to you, and I would like to mention a few of mine:

1. K & R Coal Company submitted a coal mining permit application to the Federal Government, Office of Surface Mining (OSM) to mine the Federal coal in Haskell County, Oklahoma. It is now three years since the application was submitted. I have submitted at least a dozen documents in support or in response to their deficiencies in that application. I have been told by OSM at least a dozen times that the application is complete and adequate. But a week, a month, and then a year later I was told there were problems. Four different groups reviewed my application one after another from beginning to end. In addition, a consultant firm was paid \$50,000.00 to review this application.

Ladies and gentlemen, to make a long story short, I STILL DO NOT HAVE MY PERMIT TO MINE COAL. Is this poor planning on my part?

2. Oklahoma Permanent Rules and Regulations Section 816.106 state that "when rills and gullies deeper than 9 inches form . . . the rills and gullies shall be filled, graded, or otherwise stabilized . . ." This section does not specify WHEN they should be corrected. Many factors are involved in the timing of correcting rills and gullies such as weather, planting seasons, etc. There have been times when we were issued violations for rills and gullies two or three days after heavy rains. Why? Because the ground was so wet that it could not support the equipment activities necessary to correct the problems.

Was I negligent? Was my operation the cause of this violation, or was it simply an "Act of God" beyond my control, as stated in the inspector's report? I am positive that my fellow operators have received

the same types of violations at their operations during the wet seasons.

3. I have presented to you problems confronted by my Company in the areas of permitting and enforcement.

I would like to tell you my sad story about the reclamation bond release which has been a major disaster at the State and Federal level. I will not get into details of this issue except the legal notice (ad) that must be published in the newspaper for public notification. This is the smallest and least technical part of the bond release application. I submitted my bond release legal notice to Office of Surface Mining (OSM) for their approval. I received deficiencies, letters, and telephone calls requiring me to add more and more information to that ad.

It took me approximately four months before my legal notice was approved for publication. By then, my ad covered an entire legal size page, and still more information was demanded by OSM. I began to feel like Sherlock Holmes, trying to "discover" what they wanted, based on the meager clues they would occasionally release.

If the OSM staff were experienced, or at least had common sense, they would have provided an ad form that could be filled out and published. Instead, they wasted many valuable days reviewing and agonizing over a one page document, each time finding a new modification or addition. They should have a straightforward checklist of required information to be included in the legal notice, thus facilitating their own work, and taking the irritating frustration out of such a simple procedure.

I would now like to take a moment to touch upon another troublesome problem which faces our coal operator. I'm speaking of lack of market for our product.

At the present time, utilities within the state consume little or no Oklahoma mined coal, with the exception of a few utilities test burning small quantities of the local product. The states' utility companies consistently argue that Oklahoma coal possesses high sulfur characteristics which is incompatible with current air quality standards. It is true that in most instances Oklahoma coal does

contain a higher level of sulfur, but it is also true that Oklahoma coal contains a higher BTU rating, therefore, a mixture of Wyoming and Oklahoma coal would produce a product that is higher in BTU and also meets the air quality standards. Although Oklahoma coal is more expensive than the Wyoming coal, a recent increase in rail rates has brought Oklahoma coal to a competitive scale with our Wyoming counterparts. It should also be mentioned that Oklahoma has considerable minable reserves of low sulfur coal containing less than one percent sulfur. A 1983 study by S. A. Friedman of the Oklahoma Geological Survey states that approximately 68 million tons of low sulfur coal are presently minable in Oklahoma.

Our Committee would like to make several recommendations which we feel would vastly improve the climate of the coal mining industry in Oklahoma.

1. State and Federal regulatory agencies should consider the adoption of a warning system. These warnings would replace costly fines for certain violations which do not constitute imminent danger to the public or the environment. If the operator in question does not respond or abate the warning in a timely fashion, then the inspector should issue a violation. We also feel that this system of warnings should be specified and documented as to what conditions the warnings would be issued for, thus providing a uniform pattern for all operators to follow.
2. A reevaluation of the bonding procedures which would provide for lower bond amounts. Bonding companies enthusiastically write bonds for other industries, but will not write even the smallest bond without 100% collateral for reclamation bonds.
3. The return of inspection and enforcement primacy to the Oklahoma Department of Mines. At a time when the coal operator must cope with poor market and economic conditions, they should not be forced to deal with two regulatory agencies at three different locations within the state on a everyday basis for urgent matters. The ODM is best suited to write, interpret, and enforce rules and regulations that apply specifically to coal operations within the state.
4. The development of a strong market for Oklahoma coal which could easily be stimulated by the state utility companies

consuming at least 10% of the local product. If utilities would do this, it could increase coal production by 30% to 50%, thus creating jobs and income to an economically deprived area of the state. Recent studies have shown that Wyoming receives millions of dollars every year from severance taxes paid for their coal. It is almost inconceivable that the state utility companies would balk at the opportunity to reinvest a fraction of this money back to their own customers.

5. Current rules, regulations and policies should be better defined so that the two regulatory agencies, various inspectors and coal operators would all have the same interpretation of the laws that govern their industry. This would help dispel allegations of discrimination by inspectors toward different operators due to their various interpretations of the law, and also alleviate confusion toward the law throughout the industry. Specific and standardized rules, regulations, guidelines, and policies are critical if the coal operations are to be able to make sound plans for the future, before making long-term commitments and signing contracts, leases, etc.
6. It is also the recommendation of this Committee that the current procedure for determining dollar amounts for penalties should be reassessed by the regulatory agencies. Within the past year in which OSM has controlled inspection and enforcement they have assessed over 6 million dollars in penalties and the ODM has assessed over 3 million dollars in fines. The combined amounts of assessments by these two regulatory agencies gives Oklahoma the distinction of contributing 7% to the total amount of assessments for the entire country. Few, if any, other industries are subjected to these excessive dollar amounts for penalties.

We respectfully request the assistance of your good office in helping alleviate these problems at the earliest possible date. We believe returning primacy of enforcement to the Oklahoma Department of Mines and the broadening of our coal producers market would go a long ways toward returning our coal producing industry to its once powerful economic good health.

Thank you.

Senator NICKLES. Mr. Richardson.

STATEMENT OF MATT RICHARDSON, VICE PRESIDENT, P&K CO., LTD.

Mr. RICHARDSON. I'm Matt Richardson, vice president of P&K Co., Ltd. I have come here today for one reason, and for one reason only, to vocalize the truth about the people, agencies and events that have brought this committee to the State of Oklahoma.

The intent of SMCRA was to insure that coal miners mine their product, and reclaim the disturbed acreage in an environmentally sound manner. The intent was not to force small operators out of business, provide a mechanism for regulatory blackmail between coal market competitors, or disgruntled landowners. Likewise, the intent of OSM oversight roll in the State of Oklahoma was not to provide a relief valve for the agency, from the political pressures of Washington, DC.

In Oklahoma's case, any failure of the various parts of the Oklahoma program prior to the 733 action can be directly traced to the failure of Robert Markey, Director of OSM, and Jerry Thornton, Regional Solicitors Office in Tulsa, to provide effective management functions in any other way than by direct confrontation and scare tactics.

The easiest way to demonstrate the singular method "oversight" which was used until the placement of the OSM Muskogee field office is to relate the following: In mid-1983, the coal operators and the various affected groups were requested in Oklahoma City at the Oklahoma Department of Mines. The meeting began about 10 a.m., the purpose of the meeting was soon to be made clear by Markey. It turned out that Markey had requested ODOM to call a meeting so Markey could himself relate some very grave news. As per Markey's position, the Oklahoma Legislature had screwed up * * * due to a fluke in the statutes between the interim program regulations and the adoption of the permanent program, he proceeded to announce, that approximately 70 to 80 percent of the operators within Oklahoma were operating without a valid permit, therefore he had no other choice but to close the operation in question down. The sole reason for this action was a statutory bloop in the Oklahoma program.

Mr. Chairman, I ask that you put yourself in to the shoes of the coal operators at this point in time. We are conducting normal business transactions, making money, losing money, as the case may be, negotiating loans, negotiating leases, negotiating heavy equipment contracts, et cetera. With this in mind, all of a sudden, this bureaucrat from Tulsa pops up and says to the operators that you are out of business because of a regulatory fluke.

What were the coal operators to do. They did the only reasonable thing they could do, they kept digging, and reclaiming, in hopes that the two agencies who were in severe conflict could work the problems out. The agencies finally did work the problem out, but months went by, when the operators were stagnant, unable to make long-term commitments because they did not know the status of the ongoing operations.

However, as always, the coal operators were caught in the middle, this time by the compromise itself which was made between the two agencies. ODOM was forced by OSM, pursuant to the compromise, to announce that due to the fluke there were numerous permits with the State of Oklahoma, even though they were issued prior to the adoption of the Oklahoma permanent programs regulations that these permits were now deemed to be permanent program permits. This may sound trivial to the subcommittee, however this singular action, if upheld, for those operators affected increases the reclamation bond liability on the permits in question from two growing seasons to 5 years. The power to require bond is similar to the power of taxation, it is the power to destroy if used improperly. Today, this unexpected bond liability combined with agency fumbling, delays, and the improper policies on bond releases which should rightly be approved stand to force even more of the Oklahoma coal operators into extinction. In P&K's instance, we have had bond release applications that were filed years ago which have not been properly acted on even today.

Now, let us regress back, back to the heart of the ODOM/OSM conflict. The period in which Markey and Thornton were trying to prove that ODOM was not doing their job. Let me ask you a question. How do two people who receive their motivation by the political climate in Washington, DC, set out to prove their agency OSM is in fact doing a bang up job? Answer: Find a State where the coal industry is relatively weak politically and attempt to document how the State agency is failing in it's regulatory mandate. Proof that the motivation came from the political pressures in Washington can be found in Carl Close's own words, wherein Close remarks, "We are under enormous pressure to do far more than nothing, including many very real political pressures."

Markey and Thornton set out to do far more than nothing. With their Tulsa office, they began to orchestrate the bombardment of 10 day notices and notice of violations and cession orders upon the Oklahoma operators, the effects of which can still be seen today, in all of the glory of the unreclaimed mine sites. Some companies possibly could have survived long enough to minimize surface disturbance, partially or all together, had it not been for the insidious bombardment of the confrontation style management and scare tactics used by the Tulsa OSM office. I remember at least one instance when Tulsa OSM inspectors showed up at the mine sites to do the routine inspections with TDN's or NOV's already written, typed and signed before inspection ever took place. On yet another instance where a Tulsa OSM inspector was investigating a citizen complaint, the inspector contacted Thornton, who technically had no involvement in the day-to-day affairs of it's client [OSM], until legal action is pending, via mobile radio telephone when he was unable to find a way in which to write a violation. There I am, standing in a semireclaimed area, the dumb coal miner waiting for the outcome of some decision that could drive me to bankruptcy, while the inspector is being personally directed by the regional solicitor, both of whom are looking for a way to write a violation.

This was a point in time as is still today, in which the citizens complaint is given paramount priority, whomever they may be, even if it's a disguised coal company attacking his competitor for

market reasons, or whether it is a simple case of a dissatisfied landowner taking advantage of the agency conflict to collect additional surface damage sums from the operator, or whether it is a conflict over land damages prior to mining the citizen is deemed to always be right, and the operator wrong. In my opinion, Thornton used these citizens complaints to further his position that something was wrong. He not only used the complaints, but he, in fact, used the citizens themselves to further his own agency goals. He directed Tulsa OSM to investigate, to document so he could in turn use these as evidence in his 733 action. He kept the complaints alive, he added fuel to them. In one of P&K's instances, I am told that Mr. Thornton even went so far as to personally lobby the management of the local Sierra Club to become involved in the lands unsuitable petitions, which has been filed on our Rock Island properties.

One of the concerned citizens that repeatedly filed complaints against P&K was Larry Lairmore. However, in these instances every NOV that was written by the Tulsa OSM office due to the Lairmore complaints were won by P&K. P&K's position all along was that Lairmore simply wanted additional surface damage payments. Tulsa OSM wouldn't believe us. P&K won the Lairmore hearings and Lairmore finally reiterated his goals out of frustration in front of hearing officers and lawyers, that is, he would drop all complaints, 2 or 3 years worth, for a one time payment of \$50,000. Regulatory blackmail as P&K had said from the beginning.

Another instance, however this one cost our company approximately \$1 million and costs of the jobs of over 60 employees in southeast Oklahoma, was the lands unsuitable petitions which were filed by CCE. If any conflict was ever fueled by Thornton, this was. Thornton made such a big deal about it, it became one of the major reasons for the 733 action. However, from the beginning, P&K told Tulsa OSM it was simply a major conflict over surface damage payments prior to mining operations, as the mineral rights were owned by a separate entity; namely, Rock Island RR. Proof of this was finally given when Ann Lynn Petrick, one of the founders of CCE, said on the witness stand in Latimer County, OK, "I don't care if they mine my property as long as they pay me enough." This conflict was eventually resolved, mining now occurs on the Petrick property. However, the irreparable harm that was caused P&K and P&K employees by bureaucratic delays forced upon us and our employees by Thornton can never be recouped.

Clearly another time when Thornton orchestrated and abused his power and position came at yet another crossroad of the P&K/CCE conflict which Thornton had fueled. At this juncture, after several unnecessary hearings took place, the permits were finally issued. However, P&K decided it could not risk another startup, shot-down episode, which had become the standard on the Rock Island properties. Therefore, we subcontracted a portion of the operations to one of our competitors. Thornton knew this, and personally decided that Oklahoma miners should be disallowed the right to subcontract, and he definitely took the position that our subcontractor, named Turner Bros., Inc., was "a bad operator," and should not be allowed to operate anywhere within the State of

Oklahoma. He plowed through the regulations and found one obscure point, a regulation that defined operator as a person who removed coal from a permit, and a requirement that all operators be named in the permit. Thornton thought he had found, once again, a mechanism to shut P&K down. About this time, he received a phone call from one of the members of the CCE which complained that TBI was on permit. Pursuant to this citizen complaint, prior to the complaint being received in writing, Thornton issued a 10-day notice to ODOM, which required ODOM to issue P&K a violation that mandated the removal of Turner Bros., or shut down of operations within 24 hours.

It should have been very simple to solve the paperwork problem and abate the NOV, this could have been done by P&K submitting a revision of the permit application, which named TBI as additional operator, but Thornton would not allow it. Thornton had decided himself without hearings, or any other judicial or administrative process that TBI was a bad operator, and should be stopped from mining within the State of Oklahoma, and that any attempt to modify the permit should be disallowed, thereby forcing TBI out of the operations and for the fourth time, stopping mining operations by P&K, on the Rock Island properties.

The final example of the confrontation style management that Tulsa OSM uses lies in a big stink that Tulsa OSM is at this point in time attempting to erupt. About a year and a half ago, P&K entered into a settlement agreement on fines with the Oklahoma Department of Mines for past violations. I am told Tulsa OSM and/or Thornton are presently attempting to find ways to avoid the agreement. Instead of Tulsa OSM coming to ODOM or P&K saying we have a problem with this document, or settlement agreement, let's work it out, they, in their usual confrontation style management will probably attempt to force ODOM to cancel the agreement or take action directly against P&K.

In closing, unless there is any misunderstanding about P&K's position, we support wholeheartedly the Oklahoma Department of Mines in the idea of full State primacy. However, let me also make it clear that Muskogee OSM office has done a very good job, their attitude seems to be more in line with working with the operators, instead of against them. Although full State primacy is the only system that will function, and work properly, and smoothly, it will clearly falter without a complete change in the upper management of the Tulsa OSM office and the resignation of Jerry Thornton.

Senator NICKLES. Mr. Richardson, thank you very much for your comments.

Mr. Podpechan.

**STATEMENT OF FRANK W. PODPECHAN, ON BEHALF OF
SWEETWATER COAL CO. AND HICKORY COAL CORP.**

Mr. PODPECHAN. I am Frank Podpechan, and I am the Sweetwater Coal Co's president and I'm here also as an officer of Hickory Coal Corp.

My testimony has been submitted, and I'm not going to read it, but I'll just make some general comments here, relative to what's been said. Basically, I was partially instrumental in the changes

that came here because of the unfairness that seemed to be around at the time this takeover occurred, in April of 1984. If Oklahoma is going to regulate the Oklahoma coal business, which I agree that they should, based on Congress' intent, then we need to have an adequate fair department there, and we also need to have an adequate oversight from the OSM. But, what happened, and what seems to always happen is there is an adversarial relationship between those two departments, not one of cooperation. Therefore, if we put ODOM in, we need OSM oversight only, and to work with them, and not against the operators.

What happened is they all came down and we started getting the violations from OSM, and we started getting the CO's. They didn't come through ODOM, so the law really wasn't followed to begin with.

OSM, it's my understanding, or at least the Federal agency only has the right to issue a CO when there is eminent danger to the environment or the citizenry. Most of these violations were not in danger, and they were rills and gulleys and what have you. There probably were some CO's that were rightly issued, but damn few.

Senator NICKLES. For the record, what do you mean by CO?

Mr. PODPECHAN. Closure Orders, with a \$22,500 fine. There probably should not have been any of those issued, at least without warning of them, but anyhow, that's my idea of what an oversight means, and I think the Federal law says that. That's not what happened.

Now, since we've had this change order, the Federal Government has come in and they have been doing an adequate job, and they have been doing a good job, in the enforcement of the regulations, on this temporary basis. I think most of the operators agree to that.

Senator NICKLES. The State, or the Federal Government?

Mr. PODPECHAN. The Federal Government, because they are the one that is doing it. The State is only doing permits now. They're not regulating any of the enforcement now, because the Federal Government is in charge. Theoretically, November, as Ms. Townley said, the State would come back, and start enforcement.

Relative to the fines, we never get fines less than 30 points, or they are almost always 30 points or more, and that's \$1,000. Anything under 30 is less than \$1,000, and they tend to not fine for that amount.

As an instance, in November of 1984, after OSM had been involved since April, and I had at my monthly inspection, one particular person, which I have advised my Congressman and also my Senator about, descended on me and gave me 16 violations in one day, after he had been there periodically since April. The fines were probably around \$8,500 and I am of course contesting them.

Senator NICKLES. Would you repeat your last statement. What triggered these 16 fines?

Mr. PODPECHAN. Well, one particular inspector who is no longer part of the staff descended on Sweetwater, and he issued 16 different instances of violations each, and that's a potential of \$1,000. I think they ultimately became \$8,500.

Senator NICKLES. Have you paid the \$8,500?

Mr. PODPECHAN. No, I have had my informal hearing and now I'm going to my formal hearing on these, and I have \$8,500 outstanding at this time. I will then take these on up the line, as far as I can, with my attorney, but some of those seem a little overzealous on some people's part. But, I think as far as the Muskogee office is concerned, sir; and I don't think that that's their general attitude. I think that that was just a person, but that has some reflection on them.

Basically, though, what OSM needs to do is come in, and oversee a good Oklahoma program. They can do it, they have staff. Oklahoma has staff. We're having problems obviously with this, that and the other, because of their new staff, but hopefully, it will work itself out. Permitting is a real problem for us. It takes longer to get a permit than it does to mine it. I have one permit that's been in the office down there for 2 years. I have not pushed it too hard, because I was not absolutely ready, but if I had of been, well, the reason I'm doing this so early, is because I will need it sometime, so I have to leave myself that much leeway. Most small companies cannot do that.

Also, for the record, I think there are 15 operating coal companies in Oklahoma at this time. If there are 60 employees down at the State, that gives us three a piece. Thank you.

[The prepared statement of Mr. Podpechan follows:]

June 12, 1985

TESTIMONY PRESENTED ON BEHALF OF SWEETWATER COAL COMPANY AND HICKORY COAL CORPORATION BY FRANK W. PODPECHAN TO THE SUBCOMMITTEE ON NATURAL RESOURCES DEVELOPMENT AND PRODUCTION OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE UNITED STATES SENATE

In my opinion, the major problems currently facing the Oklahoma coal mine operator include the following:

RECLAMATION BONDING

Since April 30, 1984, reclamation bond amounts, under the watchful eye and to elage of OSM, have increased to the point of having the practical effect of being prohibitive of mining. I have to wonder if that is not, in fact, the desired effect.

As an example, I currently have an application for a mining permit pending before ODOM that provides for the bonding of 55.4 acres during the first mining increment. The mining plan calls for the backfilling and grading, as requested by the landowner, of several old, abandoned strip pits that lie adjacent to the mining area. The reclamation bond for this first increment has been set at \$390,520.23, or an average exceeding \$7000.00 per acre. The purported reason for the high bond is the fact that I intend to reclaim the old, pre-law pits. If anything, my reclamation of previously disturbed, but long since reclaimed spoils, should favor reducing the bond, not increasing it. The actual reason, however, for the prohibitively high bond is that the bonding calculation uses an equipment operating and owning cost that is three times higher than it should be. My efforts to point this out, however, have been to no avail.

But high bonding is not the full problem. The problem is compounded, especially for the smaller operator, by the fact that bonding sources have become fewer at the same time that bond amounts have increased. Surety companies have abandoned the reclamation bond market in Oklahoma because of the regulatory uncertainty that abounds (The question is: who is regulating what? Not even the regulators seem to be able to answer that one.) and because of the apparent lack of any effort by the regulators (both ODOM and OSM) to timely process bond release applications. Each blames the other for the slowdown in the issuance of releases. Surety companies are not known for taking risks and clearly there is too much risk in the Oklahoma coal industry at this time, much of it generated by the confused state of the regulatory enforcement process.

The solutions are twofold: First, common sense and practicality have to be considered in the bond calculation process; and second, either the Department of Mines or the Office of Surface Mining has to be the regulatory authority in the State of Oklahoma. We cannot continue with both. A decision needs to be made soon as to whether or not OSM will institute a complete federal program in the State or turn the complete program back to ODOM.

INSPECTION AND ENFORCEMENT

I believe that the Director's decision, effective April 30, 1984, solved the primary enforcement problem that the operator faced at that time--the problem of dual and conflicting enforcement at the minesite by both ODOM and OSM. Because of OSM's and ODOM's inconsistent application and interpretation of the Oklahoma permanent program rules, the operator was always caught in the middle, never sure of what had to be done to meet the requirements of the regulations. Probably every operator in the State can attest to an instance or instances in which the operator was conducting operations in a manner that had been approved by ODOM, or its inspectors, only to have OSM come along later and issue a violation. In this regard, the intervention of OSM in Oklahoma has had a beneficial impact. Since then, at least, the operator has had to deal with only one agency in the field. But, the problem will occur again if ODOM regains enforcement authority over the Oklahoma permanent program unless Congress clarifies that OSM's role in that event is limited to oversight of ODOM's performance and does not include, except in exigent circumstances (as defined in Section 521 (a) (2) of the mining act), direct enforcement in the field. I consider the elimination of overlapping field enforcement by more than one agency to be critical to the eventual successful implementation of the Congressional scheme for regulation of coal mining in this country. But, for the time being at least, that problem has been cured in Oklahoma.

However, OSM's enforcement action since April, 1984, has not been without problems for the coal mine operator. The first problem is the result of the constant turnover of OSM field personnel. Typically, with each new inspector comes a new interpretation of the regulations and, in spite of the fact that the mine's previous inspector had been giving the mine a clean bill-of-health, with each new inspector comes several new violations. Again, the problem is one of lack of consistency. In this case, however, the problem occurs because of differing interpretations of the regulations by inspectors, rather than agencies.

Another problem has been the lack of any meaningful use by OSM of the penalty formula or the informal assessment conference provisions of the regulations to make the penalty fit the crime. Instead, OSM appears to prefer to settle these matters through the Solicitor's office at or about the time of a formal administrative hearing. The problem, quite clearly, is that this perversion of the enforcement process costs the operator substantial sums in attorney fees and requires that he submit the full amount of the proposed fine before he can get a meaningful review of his side of the case. The effect is to coerce the operator into accepting OSM's decision in the matter, both as to the fact of the violation and as to the amount of the penalty. Invariably, penalty points are set at the maximum of the applicable range, and are only infrequently changed at the assessment conference. I would suggest that OSM is using the penalty point and assessment conference provisions for discovery and adversarial purposes to gain maximum leverage for later settlement negotiations, rather than for the purpose intended by Congress of promoting early, less costly

resolution of the issues.

As a possible solution to the problem of inconsistent interpretations of the mining regulations, I would suggest that Congress modify Section 521 (a) (3) of the mining law to provide for a warning step prior to the issuance of a notice of violation by the field inspectors. A provision of this kind would eliminate much of the confusion and surprise suffered by the mine operator when confronted with inconsistent applications of the regulations.

The only solution to the problem of OSM's perversion of the penalty formula and assessment conference provisions of the mining act is for Congress to properly carry out its oversight function and require the regulators to properly administer the law.

PERMITS

With OSM's continuing supervision, the permitting process in the State of Oklahoma has practically come to a standstill. The applicant is being required to submit and correlate such an excess of detail about the proposed mining area that in many cases the time required for permitting the property far exceeds the time it takes to mine it and, particularly in the case of the small miner, the cost begins to be prohibitive. In many, if not most, of the instances the requirement that the information gathered be site-specific is duplicative and unnecessary. As an example, I am being required to gather and resubmit all of the same data for a new permit that I had already submitted for the old, even though the two properties are adjacent to each and are within the same watershed and the coal lies within the same geological unit. In fact, there is not enough variation in the analysis of the data collected in all of northeastern Oklahoma to justify requiring every operator to collect, correlate and submit the same data for every permit. We haven't found an aquifer in the Sequoyah coal overburden yet, but we are still being required to look. It would appear that the regulators are more enamored of gathering information than they are of carrying out their responsibility of issuing permits to responsible miners. The effect of this absolutely literal interpretation of the permitting regulations mandated by OSM falls primarily on the smaller operators that do not have the economic base to maintain the staffs necessary to meet the regulatory requirements. In essence, the smaller operator is being eliminated by this fool's search for what we all know doesn't exist.

The solution is a more balanced and knowledgeable interpretation and administration of the regulations. In this regard OSM's proper oversight role of ODOM's permitting processes should be to eliminate the excesses that are costing the operator time and money, instead of, as the case seems to be, of continually requiring even greater detail and specificity. In short, Congress in properly carrying out its oversight role in this regard has to force OSM out of its current role as an adversary to the mining industry in Oklahoma and into its proper role as an impartial arbiter.

There are a number of other problems faced by the Oklahoma coal operator, but resolution of the foregoing appear to me to be the most critical.

Senator NICKLES. Next, Mr. Tipton, with McNabb Coal Co.

STATEMENT OF VIRGIL W. TIPTON, McNABB COAL CO., INC.

Mr. TIPTON. Thank you, Senator Nickles.

My name is Virgil Tipton, and I am an employee of McNabb Coal Co., Inc., of Catoosa, OK. The facts I present here today are verifiable by record, except for a few occasions, and those were conversations between various individuals and company representatives. All facts I present have been provided to OSM, to the State of Oklahoma, and portions to the Inspector General of the United States.

I would like to tell you a horror story. A story which is not fiction, but the truth. Truth, which cannot be denied, because in almost every case it is backed by documents which were, and in some cases, still are within the records of OSM, and the solicitors office in Tulsa.

Has a fraud been committed? Has a conspiracy existed? Is this fraud and conspiracy continuing? Or was what has happened simply a case of mismanagement and gross incompetence on the part of numerous Federal employees? I cannot sort out which. I believe there may have been a combination of all of the above. In any case, here are the facts and let's let the chips fall where they may.

In 1981, McNabb Coal Co., Inc., obtained a permit to conduct mining operations—noncoal—on property which the company had a coal mining permit. This non-coal-mining permit was required by the Oklahoma Department of Mines because McNabb was producing limestone rock and shale from an ongoing coal permit. State law requires anyone who produces rock and/or shale to have a permit for noncoal production.

At that time, a specific section of Public Law 95-87 was brought to the company's attention, which, if implemented, would allow the production of coal under this noncoal permit. On the 23d of May 1983, the company met with the deputy chief mine inspector of Oklahoma. This meeting resulted in the canceling of all company mining permits with respect to coal and the requirements for the company's continuing operation under the noncoal permit.

In mid June 1983 OSM held an informal meeting in Oklahoma City with the ODOM. As a citizen of Oklahoma, with some interest in Oklahoma mining, I attended this meeting. A transcript of that meeting and a listing of those present from OSM and the ODOM is a matter of public record. However, a listing of other individuals present has been removed from this record. Mr. Carl Close of OSM told all present OSM would not accept or allow comments from anyone present except OSM and ODOM personnel.

At noon, various members of the panel started to lunch. Mr. Gerald A. Thornton, OSM department counsel, approached me in the hallway. Mr. Thornton expressed "deep regret" that McNabb's had canceled our coal permits. He, Thornton, stated the company could not operate under this noncoal permit and that he would see to it the company was required to "return to the fold." He stated, after some discussion, "You folks are not going to get away with this."

During the walk to lunch, Mr. Michael Lett of the Tulsa field office of OSM approached me. He stated and I quote, "You ain't going to get away with it. What does McNabb think he's trying to pull. Thornton won't ever let you get away with this." Back in the hearing room, Mr. Robert Markey of the Tulsa office of OSM approached me, he stated that OSM couldn't allow this exemption to continue. Mr. Markey stated within a few days, Thornton would have the paperwork to stop this from continuing.

In late June, Mr. Steve Martin—OSM—inspected McNabb's operations. His statements include the following: "You folks made OSM's bosses and lawyers mad. You better get ready for the consequences". After returning to the Tulsa field office, Mr. Martin issued six 10-day notices to the State of Oklahoma regarding McNabb's operations on a noncoal permit. He also instituted a two-way memo to Mr. Gerald A. Thornton requesting direction as how to proceed in the further pursuit of this matter. That memo, I might add and any written response to it has been removed from the files at OSM.

After the State responded to the 10-day notices, OSM conducted an audit of the company records and a complete inspection of all company operations. In late December 1983, Mr. Robert Markey, Regional Administrator of OSM sent the State of Oklahoma a letter stating, and I quote: "The evidence in this case seems to support McNabb Coal Co.'s exemption. However, the State of Oklahoma needs to review its policy in granting any future exemptions."

On April 30, 1984 OSM saw fit to remove the State of Oklahoma's approval for enforcement of Public Law 95-87. We now had the Muskogee Office of OSM. Mr. Bob Mooney was placed in charge and early May 1984, he called to say he would drop by for a visit. A few days later, he arrived at our office, and stated he didn't like surprises and that he sure had had some since coming to Oklahoma. A few days later, an OSM inspector, Mr. Sam Peteto, conducted an inspection of our operations. He stated, and I quote: "Nothing has changed since December. You are still a noncoal operation." Mr. Peteto returned to Muskogee and 2 hours later, Mr. McNabb received a phone call from Mr. Mooney. I listened to the conversation, and Mr. Mooney said "More surprises, I don't like surprises." He, Mr. Mooney, said he wanted to meet with Mr. McNabb again, and on August 15, 1984, he came to the company offices in Catoosa. This meeting covered numerous topics, weather, Oklahoma football, if the State was going to get the program back, and then, why were we a noncoal operation. Mooney said and I quote, "Well, you know you can't beat us. We've got 168 lawyers for things like this. You can't afford the legal fees."

On August 31, 1984, OSM again audited the company for an exempt status. This audit included request for customer lists, destinations for all materials, and a complete listing of all product prices. The company objected to supplying a customer listing and OSM issued four notices of violation of failing to maintain water-monitoring records. These violations were given 30 days to abate and after 30 days, became a CO for failure to abate. The current posted violation amount is \$48,500. We have requested conferences and hearings at every level, but have yet to get to a point where

we are allowed to present our case to court. We have in the mean time been subjected to repeated requests for additional information and records. We no longer have any company integrity with respect to what we do or intend to do. All this information is public record, yet OSM's regional solicitor continues to press for additional information. This information has been passed and continues to be passed to those companies which compete with us for business.

A conspiracy? Yes. Beyond a shadow of doubt. Who? Thornton, Mooney, Markey, Lett, maybe Close. I don't know. All I do know is this. Congressman Udall called for an investigation into the takeover of Oklahoma's program. Congressman Synar called for an investigation in the mega-bucks case. Well, if you gentlemen would really dig, you could find out what the problem is. What is actually going on. Mismanagement of OSM may be a fact. But, I think the real intent is to stop all surface mining in the State of Oklahoma.

I personally have been threatened with fines, investigations, and other actions, even personal harm. Serious? Yes, damn serious. It's my livelihood, and Mr. McNabb's life. Oklahoma coal has been given a black eye to carry worldwide. Oklahoma can't compete in the current world market with these adverse costs. A complete investigation of OSM's actions, and the solicitor's involvement in these actions must be made immediately. June 15 may be too late. It may already be too late. Why should the decisions of a few Federal bureaucrats be the basis for an industry to be destroyed.

OSM and the Tulsa solicitors requirements for mining companies to post bond directly with OSM in instances where the ODOM and OSM cannot agree on action to be taken is a direct prostitution of the intent of Public Law 95-87. OSM's verbal responses of "you're one of those people who think you own the land. Well, you don't own it, and we're just letting you use it," is not within the intent of the law.

Why has OSM taken this attitude? I cannot answer for OSM. I can only make the following conclusions:

One, OSM's management has taken the position that companies are always wrong.

Two, and, possibly, OSM has decided to make Public Law 95-87 a national land use law, even though it may require infringement on individual rights to property.

Last year, we saw coal imported into the United States, why? Will coal importation amount to 10 percent of our power demands? 20 percent? 50 percent? Will the next energy demand be created because of no markets for coal production?

OSM's actions in Oklahoma truly show that we now live in a country where the rights of the citizens can be waived under the umbrella of "Protection of the Environment." Protection at all costs, as long as those costs are someone else's. Thank you.

Senator NICKLES. Thank you very much, Mr. Tipton. I'm going to ask several questions. If any of you want to respond, you may do so. I mentioned at the opening that I was concerned. Are any of you concerned about the statements that you're making today before this committee that such statements might have an adverse affect on your relationship with OSM or the Oklahoma Department of Mines, or potential fines or harassment by these regulators?

Mr. DAHLGREN. Oh, I hope not. Surely, they're not that immature, or silly.

Mr. TIPTON. Mr. Chairman?

Senator NICKLES. Yes.

Mr. TIPTON. I think in our situation, within the next 2 weeks, we will have repercussions from OSM, because of the statements that are made here today. It's been too convenient for inspectors to say such things as well, you've still got bonds pending, you've still got permit applications on file. Such actions as during an inspection, throwing a four-wheel drive vehicle into park, and stopping the vehicle in a rapid manner, and saying there is two ways to do things, and both of them are mine. That type of attitude is going on right now.

Senator NICKLES. Have you heard those comments made in the last few months?

Mr. TIPTON. Yes, I have.

Senator NICKLES. Have they been made by Tulsa personnel, Muskogee personnel?

Mr. TIPTON. Well, you've got to remember that part of the personnel in Muskogee at one time were personnel from the Tulsa office. And, yes, those statements have been made.

Senator NICKLES. Would you care to identify those persons?

Mr. TIPTON. I've identified them in my testimony, Senator. If the matter is pursued further, I would be happy to provide the Senator with some direct tapes of inspections that have been made. One of Mr. Thornton's contingents to me was that he had copies of all of the tapes that I've made for the last 8 years. I've been known to carry a tape recorder around with me. I have some tapes that have been supplied to our attorney, which would probably be of interest to the Senator. It's being transcribed right now.

Senator NICKLES. All right, I would be interested.

Mr. TIPTON. Senator, you've got to remember something. It's my attitude that everything in the mining industry has got to be done aboveboard. If the total intent of Public Law 95-87 was to reclaim the land, and that's the only intent of Public Law 95-87, then, everything that's done in the mining industry should be done up front. I don't believe in hiding anything under the table. But, if OSM's total intent of their involvement in the State of Oklahoma, is to stop surface mining, then probably the regional solicitor doesn't want that information made public, and I think it will be. I think this hearing is one way to do that.

Senator NICKLES. You mentioned the regional solicitor, and I think Mr. Richardson, you did, as well, in your statement. Do you feel like he is enforcing this statute as it's written with the regulations as they are written, or do you think he is—well, as Mr. Tipton says, maybe has a vendetta trying to stop surface mining in the State of Oklahoma?

Mr. RICHARDSON. My understanding of what Mr. Thornton has essentially been doing is using Oklahoma as a testing ground for various legal questions. You know, the rights and responsibilities and policy determinations, and the definition of the regulations themselves. This business about an operator being defined as being listed on the permit. OK, that was the first time it had ever hap-

pened. He was looking for ways to shut the operation down, and that's the regulation and interpretation he came up with.

Senator NICKLES. Mr. Dahlgren.

Mr. DAHLGREN. I would like to say something. I think that they would like to use the small operator in these situations, because they don't want to confront a major operator. You take Exxon, where coal is not their major source of money. They've got just as many attorneys as the Federal Government, and they could go all the way with them. We don't. We have limited sources, and we cannot stand that kind of financial situation.

Senator NICKLES. Mr. Richardson, you mentioned the problem you had with Mr. Thornton, in dealing with the definition of a contractor, and you were going to subcontract out to Turner Bros. How did that resolve itself?

Mr. RICHARDSON. When the State issued the violation, we ended up being forced in the courtroom, in Okmulgee County, OK, and we got an injunction against the State, and we're forcing their particular definition on this particular permit. It was a small permit, and I think it was less than, I think, 21 minable acres or something like that, and we got the injunction to mine the permit. The case is still in limbo.

Senator NICKLES. Did Turner Bros. mine that?

Mr. RICHARDSON. Yes, they did.

Senator NICKLES. So, you had to go through the courts to continue, under the definition to where you could subcontract to Turner Bros.?

Mr. RICHARDSON. Only because Thornton had made it clear that he would not allow us to revise the permit, and list Turner Bros. as an additional operator.

Senator NICKLES. That was really all that was required is if you had listed Turner Bros. as an operator, then there wouldn't have been a problem?

Mr. RICHARDSON. Exactly.

Senator NICKLES. So, it was more of a paperwork technicality?

Mr. RICHARDSON. That's all it was, is paperwork.

Senator NICKLES. Mr. Dahlgren.

Mr. DAHLGREN. At this particular time, I was a contract miner, and all it is is just putting down and filling in one sentence. All this trouble over just filling out one sentence. I was a contract miner for Lone Star Steel.

Senator NICKLES. I have heard from all of our panelists to some extent, and Frank, I think you mentioned it as well, that you keep running into confrontations with OSM, instead of cooperation. Is that an accurate summation?

Mr. PODPECHAN. I think that's further in the past, than in the present. I have not noticed the Muskogee office of late confronting us. They have been much better and they've been enforcing very regularly, and difficult, but they have not been unfair, that I could detect. Some of these Tulsa people did seem to have a vendetta, but, Mike Lett is the only one that bothered me.

Senator NICKLES. You mentioned in your statement a couple of things that I'm interested in. One, do you feel like the operation of the OSM Muskogee office has been one of cooperation or harass-

ment? Two, has more of the harassment been coming from the OSM Tulsa office?

Mr. PODPECHAN. Well, right now, to my knowledge, there is no harassment. This all happened in the past. The last time I had a problem was in December, so here it is, June. Things are better in that respect, from my experience.

Senator NICKLES. From both Muskogee and Tulsa?

Mr. PODPECHAN. Well, Tulsa is no longer involved. To my knowledge, they're in an oversight position, and apparently they're doing it like it's supposed to be done. Muskogee, of course, is the enforcement office for Oklahoma, under Oklahoma law. So, they're acting just like they're an Oklahoma agency, in that respect, and inspecting us regularly, according to the law.

Senator NICKLES. One question. You also mentioned that you received the 16 violations in one day.

Mr. PODPECHAN. Yes.

Senator NICKLES. What prompted that?

Mr. PODPECHAN. I don't know, just this particular individual came by and decided that was what he was going to do.

Senator NICKLES. And, that was an OSM individual?

Mr. PODPECHAN. Yes, this was Mike Lett, and he was at the Muskogee office at the time, but then, he's no longer there, and I don't know why, or what causes these things to happen, but they definitely happened.

Senator NICKLES. Mr. Dahlgren, you mentioned that you have been seeking a permit for 3 years?

Mr. DAHLGREN. Yes, sir, that's correct.

Senator NICKLES. Did you ever get the permit?

Mr. DAHLGREN. No, we do not have the permit. The last situation that occurred was in this last December or January, a solicitor read within the permit text that one landowner making a statement on another landowner's piece of property, that he cut hay over there. Well, he read into the law that the area where the hay is being cut is now determined as prime farm land. We conceded, we just said fine, we'll go for prime farm land, and it's not going to disturb our procedures, and we just want the permit.

But, my thought is, this is what we always run into. They come out with determinations and they've got you over a barrel. You've got to go with it, or you don't get a permit. My contention is this. If we pulled hay off of it, does that make it prime farm land. You know, the ridiculousness of the interpretation of the law just go on and on and on.

Senator NICKLES. We heard statements, I believe, from our first panel that the State of Oklahoma was doing a good or better job in permitting. Would the panelists agree with that statement?

Mr. DAHLGREN. I don't have any experience currently.

Senator NICKLES. Is 3 years in the permitting process—

Mr. DAHLGREN. That's not a good experience. But, that's with OSM, Denver Tech Center. That's not with the Oklahoma Department of Mines. That is a Federal mine.

Senator NICKLES. A Federal mine in Oklahoma?

Mr. DAHLGREN. Yes.

Senator NICKLES. In what county?

Mr. DAHLGREN. It's in Haskell County.

Senator NICKLES. Why would the permit come from Denver?

Mr. DAHLGREN. It's on a Federal lease, and it is supervised by OSM directly with no cooperative agreement with the State Department of Mines, meaning I deal directly with OSM on enforcement, and inspection and permitting.

Senator NICKLES. You mentioned also, on the permit that you're seeking that you've already invested \$500,000 or \$600,000, and you still don't have the permit.

Mr. DAHLGREN. That is correct. We paid \$350,000 just to acquire the lease.

Senator NICKLES. To the Government?

Mr. DAHLGREN. No, sir, to a gentleman named Arty Hall, who was the lessor.

Senator NICKLES. The landowner?

Mr. DAHLGREN. No, he owned the lease at that particular time from the Government.

Senator NICKLES. I see.

Mr. DAHLGREN. And, we acquired an assignment.

Senator NICKLES. You also mentioned, Mr. Dahlgren, being inspected one day, and subsequently there was a rain causing rills and gullies to form which were later viewed as a permit violation. What was that all about?

Mr. DAHLGREN. That particular deal was just this last March, the first major cold front that came through. Sunday night, we had 3 to 4 inches of rain all within—like typical Oklahoma—within an hour, and there is just no way you're not going to get a wash unless you got it completely revegetated. I think the inspection occurred on Wednesday, and the inspection report reads that we were out working and repairing the damage, at that time. And, he also did put in there, this was a direct result of an act of God.

Senator NICKLES. And, what was the fine?

Mr. DAHLGREN. I don't know yet. I would have to check.

Senator NICKLES. And, are you still contesting that now?

Mr. DAHLGREN. Yes, we are contesting that particular one, to my understanding.

Senator NICKLES. Is it up to the \$22,000?

Mr. DAHLGREN. Oh, no sir.

Senator NICKLES. \$1,500?

Mr. DAHLGREN. No, we corrected it, and it was abated on time, and in this particular situation, the inspector wrote in his report that we were correcting it, and that good faith was given, and I'm not sure what the fine was.

Senator NICKLES. You mentioned one other problem that you had, and that was running a notice in the newspaper prior to obtaining a bond release. Could you explain?

Mr. DAHLGREN. We applied for a bond release approximately a year ago. We just now got it, but it took several trips to Denver, plus my engineers on the telephone, back and forth, and I don't know how long, just to work out the advertisement problem. The advertisement should be a very straightforward situation.

Senator NICKLES. You just ran an ad in the paper, and say, hey, we're finished with this, and if anybody has a response or feel like it's not up to—

Mr. DAHLGREN. In simplified terms, yes.

Senator NICKLES. And, you spent that much time trying to find out what information needed to be placed?

Mr. DAHLGREN. Into the ad, yes.

Senator NICKLES. Mr. Richardson, you mentioned you had been trying to get a bond released for what, 5 years?

Mr. RICHARDSON. Well, we have had bond release applications that were involved more than 2 years ago. For almost everything in Okmulgee County where we have mined for 7 years, basically, we've applied for almost all of the bond releases, in April, 1984, and we have yet to receive hardly any amount. We have received some from minor leases, but no major amounts.

Senator NICKLES. To obtain the bond release, do the inspectors come back, and say you need to do this, or you need to do that, on a particular acreage, before you can obtain it?

Mr. RICHARDSON. Well, what's holding these up, OSM has dictated a policy to the Oklahoma Department of Mines, dealing with the definition of a complete bond release application, quote in quote. We had a hearing on it December 19, 1984, and I have yet to receive a decision.

Senator NICKLES. Any other comments on that, or anything else?

Mr. PODPECHAN. Well, basically I think the problem is one of no practicality. I mean, either department doesn't realize what mining is in a practical sense. They only understand what it is in the law sense, and they need to work together with that. Somehow, that has to happen eventually, or there will be no coal mines in Oklahoma, or anywhere else. I think it is really up to the regulators to decide that he is going to find out what practical is, so that we can survive. I think all of us are honest, straightforward American citizens that are willing to comply with the law. I don't believe any of us of the 15 that are left are crooked or criminal.

Senator NICKLES. Do you think, and again, I will open this up to the panel, do you think the problem is the statute, the regulations, or the individuals carrying out the regulations?

Mr. PODPECHAN. Well obviously, the statutes are very difficult ones.

Senator NICKLES. Are they too difficult?

Mr. PODPECHAN. Well, I think it needs to be much reviewed, yes.

Mr. RICHARDSON. It's too full of legalisms.

Mr. PODPECHAN. But, the statutes on one thing are the regs are another, and then the enforcement is another, and then they put policy on top of the regs. When you combine all that, there is no practicality left. It's real simple to see the problem, but to solve it, it's probably very difficult. These are just people doing this.

Senator NICKLES. Is there any other comments?

Mr. DAHLGREN. I have something on bond releases, and that is, in this particular situation, we did finally get our bond, but we are applying for a permit with 2,500 acres involved—well, it involves probably about 8 to 10 miles of crop line coal. We're going to go back into an area and mine where an existing high wall is. OSM has now came out with it's determination that if you apply for say a coal mine, the length of this table, and it takes you say 5 years to mine this amount, you've got 20 more years on the rest of the project. You've got to hold the bond, the very beginning amount of that bond for the length of the mine, plus 5 years. That means, in

this particular situation, I'm going to hold from that landowner 25 years. He can't use that property. Yet, the land surely after I get through mining it, and give it 5 years, and we meet the performance standards, it should be released, and that man should have his property back. But, they've now come out and said, you've got to hold the bond on that for the length of the mine site plus 5 years, which means you know, the man can't run his cattle, and I've got to keep his cattle off is the biggest problem, because obviously, the grass is greener over the fence, and the cattle are breaking the fence down.

It seems like they are violating the landowner's rights here.

Senator NICKLES. Is that by regulation?

Mr. DAHLGREN. I think by interpretation. I can't truly give you a clear answer on that, but I think it's more interpretation than just regular regulation.

Senator NICKLES. Could you, or the association give me a letter specifically on that, and I will ask them for an interpretation of it.

Mr. DAHLGREN. OK.

Senator NICKLES. Specifically on that, and I will ask them for an interpretation of it, and maybe we can clarify it.

Mr. RICHARDSON. May I add that on one subject, OSM through administrative hearings has clearly taken the position time and time again in various hearings in various States that the liability of the operator does not necessarily end when you receive final bond release. Mr. Thornton with OSM took the position that if the bond is released and the inspector looks at the site, a year later, and there is something wrong, then the operator still has liability. There has to be an end to the liability.

Senator NICKLES. To our panelists, we thank you very much for your cooperation before the committee. Mr. Tipton too, I want to get back with you on some of the statements here, and I'm going to ask all of the rest of the panelists if they feel threatened in anyway, because I think that is very important that we make sure that doesn't happen. No one should feel in anyway, shape or form threatened or jeopardized, or that they might receive additional harassment or something by appearing before a congressional committee. We want to make sure that that doesn't happen. Thank you very much.

Our next panel is Bill Skeith, Charles Turner, Troy Johnson, Robert Jackson, and Doug Klusmeyr. To our panelists, we thank you, and Mr. Skeith, we will start with you.

STATEMENT OF BILL SKEITH, EXECUTIVE DIRECTOR, ASSOCIATION OF OKLAHOMA GENERAL CONTRACTORS

Mr. SKEITH. Thank you, Mr. Chairman. I am Bill Skeith, the executive director of the Association of Oklahoma General Contractors and we are privileged to represent Oklahoma companies, who produce some 60 percent of the coal in our State, and as such, I am making this appearance here today.

I have two resolutions, I would like to read into the record, Mr. Chairman, that were passed by Oklahoma State Senate, and the Oklahoma House of Representatives as late as June 12. With your permission, I will read the resolution.

Senator NICKLES. OK

Mr. SKEITH. The first one is House Concurrent Resolution No. 1017, a concurrent resolution requesting the Federal Office of Surface Mining to return full enforcement authority to the Department of Mines and Mining.

Whereas, on April 30, 1984, the federal office of Surface Mining assumed authority for inspection of surface coal mining in Oklahoma; and

Whereas, such action was based on a lack of qualified technical employees failing to properly interpret and enforce the office of Surface Mining regulations; and

Whereas, the Office of Surface Mining took this action and took away "primacy" for enforcing coal regulations from the Department of Mines and Mining; and

Whereas, in less than three months after this action was taken, the Department of Mines and Mining, through the actions of the Oklahoma Legislature, hired 15 additional persons to include specialists in reclamation inspections, mining engineering, revegetation and hydrology; and

Whereas, the hiring, orientation and training of these technical people was completed within three months of the Office of Surface Mining ruling; and

Whereas, since the ruling, the Department of Mines and Mining has cooperated fully with the Western Tech Office of the Office of Surface Mining in determining the case workload for Oklahoma; and

Whereas, a new position for a bonding engineer has been added to the Department of Mines and Mining to correct a shortcoming in reclamation bond calculations; and

Whereas, such actions as those previously noted show a willingness on behalf of the State of Oklahoma to fully enforce the federal surface mining laws.

Now, therefore, be it resolved by the House of Representatives of the 1st session of the 40th Oklahoma Legislature, the Senate concurring therein:

That in light of the aforementioned accomplishments, the Office of Surface Mining return "primacy" to the State of Oklahoma in enforcing surface mining regulations.

That copies of this resolution be distributed to the Governor, the Lieutenant Governor, the members of the Oklahoma Congressional Delegation, the U.S. Secretary of the Interior, the Directors of the Office of Surface Mining and the Director of the Department of Mines and Mining.

Senator, I'll go ahead with the second resolution.

Senator NICKLES. Thank you.

Mr. SKEITH. Senate Concurrent Resolution No. 21.

Whereas, Oklahoma has 380 million tons of surface minable coal of which 120 million tons are of low-sulfur coal containing less than one percent sulfur according to an estimate by the U.S. Bureau of Mines; and

Whereas, the low-sulfur characteristic is necessary to assure quality, clean air standards; and

Whereas, the higher BTU rating of Oklahoma coal provides a more energy efficient product; and

Whereas, the use of Oklahoma coal would save significant freight charges on out-of-state coal from the State of Wyoming; and

Whereas, the savings on such freight charges could offset any possible costs associated with plant adjustments; and

Whereas, the coal-fired electric plants being used by Oklahoma utilities are exclusively using Wyoming coal; and

Whereas, the Oklahoma ratepayers are paying \$300 million annually for Wyoming coal; and

Whereas, a 1982 Ozark Council Report states that \$9 million of the ratepayers dollars was paid as severance tax to the State of Wyoming; and

Whereas, the Oklahoma Legislature realizes that Oklahoma coal production does not meet the gross needs of the Oklahoma utility companies at this time.

Now, therefore be it resolved by the Senate of the 1st session of the 40th Oklahoma Legislature, the House of Representatives concurring therein:

That Oklahoma utilities using coal-fired generating plants seriously consider using a blend of at least ten percent Oklahoma coal with Wyoming coal and continue to meet air quality standards.

That the result of such a blend would assure at least a portion of the ratepayer dollars remaining in Oklahoma and enhancing the economy of the State of Oklahoma.

That copies of this resolution be distributed to the Governor; the Lieutenant Governor; the chief executive officers of Oklahoma Gas and Electric Company, Public Service Company of Oklahoma, the Grand River Dam Authority, and Western Farmers Electric Co-op; the three members of the Corporation Commission; and the Deputy Chief Mine Inspector of the Department of Mines.

That completes my statement, Senator, and I hope those two resolutions had a good bearing on this hearing.

Senator NICKLES. I think those two resolutions do have a bearing, and may I compliment you for your work in getting them adopted. I thought all they had done these last few days was raise the taxes, and I didn't know they had passed these resolutions.

Mr. SKEITH. I would say it was a difficult task to sandwich these in, because of the tax debate.

Senator NICKLES. I bet it was. Mr. Turner.

STATEMENT OF CHARLES TURNER, GENERAL MANAGER, TURNER BROS., INC.

Mr. TURNER. Senator Nickles, I appreciate you coming to the State of Oklahoma, and bringing your committee to look into our problems.

My name is Charles Turner. I'm general manager of Turners Bros., Inc., Muskogee, OK. So, that the record will be straight, Turner Bros., Inc. is and has been in Chapter 11: Reorganization since February 4, 1985. Turner Bros. is and has been the principal vehicle which the Office of Surface Mining used in implementing the takeover of a portion and ultimately all of the Oklahoma Department of Mine's functions. The action of Office of Surface Mining and the inaction of the Oklahoma Department of Mines—because of the criteria forced upon them by the Office of Surface Mining—have created problems that have forced Turner Bros., Inc. into Chapter 11: Reorganization Bankruptcy.

I come before this committee today a very disappointed man, because yesterday in the Bankruptcy Court, Turner Bros. gave up their position as a coal mining company in the State of Oklahoma. I come here "bloody but unbowed" and the Turner family as such, feels very lucky and blessed in that in spite of the death threat of the faceless regulatory bureaucracy, we have been able to formulate a contract that allows us to pay our creditors in full over the next 5 years. It allows us to preserve the 320 jobs and \$5 million payroll in eastern Oklahoma, and even allows us to continue to stimulate eastern Oklahoma economy \$35 to \$40 million per year rather than sending it to a Kansas producers economy.

I have been asked by officials of the company we have contracted with, to suppress my remarks here today because of fear of retaliation. I cannot do that. I feel I have an obligation to my sons, to the suppliers, creditors, landowners, and other coalmines in the State to stand up and be counted, in hope I can help them from the fate we have suffered. I would hope the retaliation would not be vented on others, kick the hell out of old Charley and his sons, they are used to it.

We are here today to give testimony regarding what it takes to return to the Oklahoma Department of Mines its State regulatory program. To answer this question, I feel that it is essential that the record indicate why the State of Oklahoma is in this position.

There are two primary things that created the problem existing in the State of Oklahoma at the time of the 733 hearing in December 1983. The first problem was a weakness that was created because of the failure of the Governor of the State of Oklahoma to appoint a qualified chief mine inspector with enough strength to literally stand up and look the Office of Surface Mining in the eye and defend the citizens of the State of Oklahoma's rights to administer their own State Regulatory Programs. The second was with the implementation of Public Law 95-87, two gentlemen from the Office of Surface Mining came into the State of Oklahoma from the Federal Government. These two gentlemen, namely Robert Markey, director of Office of Surface Mining in Tulsa, and Gerald Thornton who is the solicitor for the Office of Surface Mining located in Tulsa. They came to the State of Oklahoma and have been power hungry ever since they arrived. Mr. Thornton has been credited with making statements in the Spring of 1983 that mining should not be conducted in the State of Oklahoma. They have been a continual source of aggravation and created turmoil within the State of Oklahoma, literally forcing the State of Oklahoma to accept the Federal law, written as a general law covering the entire United States, rather than having the proper windows in it to govern the State of Oklahoma. They continually looked for a method in which they could obtain power to take over the Oklahoma Department of Mines and prove that they had the force of the Federal Government behind them and could force the State of Oklahoma and the mining industry in Oklahoma to be put in a state of turmoil and nearly nonexistence.

They were provided a vehicle under which their case against the State of Oklahoma was cemented when in December 1983 at a 733 hearing concerning the takeover of Oklahoma, Cherokee Coal Co., a competitor, gave slanderous and untrue testimony regarding Turner Bros., Inc. in an attempt to put them into a position of insolvency and destroy their credibility. In that 733 hearing, three gentlemen, Mr. Sam Shaw, Mr. Larry Polmier, and their attorney, Mr. Thomas McGeady talked for 45 minutes and discussed nothing except the fact that TBI was in violation, and that the Oklahoma Department of Mines was failing in every instance to implement the law against TBI, and requested that the Office of Surface Mining take them over.

Gerald Thornton happens to be a very good friend of Thomas McGeady, Cherokee's attorney. They have numerous meetings such as the meeting they had in early July 1983, wherein Mr. Thornton advised Mr. McGeady as to how to use Public Law 95-87 to Cherokee's benefit.

When these slanderous and untrue and unsworn statements were made, regarding Turner Bros., Mr. Thornton had his method of stopping the Oklahoma Department of Mines. What was worked out, and what happened was that Cherokee Coal Co., using the law, and in the name of a citizens complaint, in January 1984 requested and inspected with the Office of Surface Mining personnel six of the mines involved in Turner Bros.' operations. Anything that Cherokee Coal Co. pointed out as their idea of a violation was written by the Office of Surface Mining in 10 day notices to the Oklahoma Department of Mines and by law, those 10 day notices re-

quired the Oklahoma Department of Mines to respond to them. There were 10 such 10-day notices that contained 143 items. Because of the weakness of the Oklahoma Department of Mines, because of the fear that Mr. Thornton, Mr. Markey, and Mr. Carl Close of Washington, DC, had put into the Oklahoma Department of Mines, about their inefficiencies, their apparent compatibility with the mining industry; because of the fear of this takeover, that was being drafted, they immediately went into the field and wrote some of the 10-day notices into alleged violations.

The vehicle to justify OSM's existence and its bureaucratic thirst for power was provided at that instant; ODOM would do nothing unless shown and OSM could justify its takeover of ODOM. Turner Bros. from that point forward had problems.

The OSM theoretically only took over the inspection and enforcement portion of the State program; however, OSM infiltrated without resistance the offices of the Oklahoma Department of Mines in Oklahoma City, and their personnel literally dictated to the employees of the Oklahoma Department of Mines as to what they could and could not do. The Oklahoma Department of Mines became a pawn in the hands of the OSM and became a nonfunctioning agency, as far as any initiative, as far as any ability to expedite on their own anything needed by the mining industry. Their personnel were directed to go to the OSM schools. Their new people were indoctrinated with OSM policies that were not necessarily fitting for the State of Oklahoma. Bonding was increased from \$1,000 per acre to \$9,300 and in one instance \$28,000 per acre. And Turner Bros. yesterday was told that to mine 582 acres that we would have to put up 2.8 million dollars' worth of bonds. All of a sudden, the Oklahoma mining industry was put in a position of a virtual standstill.

The OSM had to show the State of Oklahoma their might and their power, so they opened Federal offices. They moved in some 22 people, they moved in 8 or 10, and at one time with all of the drill trucks, and so forth, we counted 27 vehicles in the Muskogee area. They had a budget that would allow them to call helicopters out of Tulsa, renting them at \$150 per hour, to go make inspections to prove that the Oklahoma Department of Mines didn't know what was going on. They were going to show the Oklahoma Department of Mines how they should regulate the coal industry in the State of Oklahoma. It is my understanding from the reports I get that the OSM has a budget of \$400,000 annually per employee. It would be impossible for the State of Oklahoma or any other State in the Union to compete, or be in competition with that type of an inspection program. They didn't show the State of Oklahoma how to do their inspections within the framework or the budget they had. They showed them how to do it when you have an unlimited budget of the Federal Government behind you.

I would like to give you a perfect example of the inspection and enforcement that our Federal Government brought to the State of Oklahoma. In March 1985, northeast Oklahoma was hit with a major flood. The Miami, OK area was completely inundated. Some 300 families were moved out from the river, out of their homes. Our Lieutenant Governor, our congressmen, our senators all went to Miami, OK. The Lieutenant Governor flew up in a helicopter,

and immediately asked for emergency Federal disaster relief. The people should have had emergency relief. They were damaged. There was no question about the perils the people were put in. There was no question about the fact that they needed help. But, there were also five coal mines in that area. We had Bill's Coal Co., we had Patches' Mine, we had Rancher's Coal Co., we had Peabody, and we had Turner Bros. Every one of those mines had lost their production and cash flow, because of water. Every one of those mines were running in mud which created higher fuel bill. Every one of those mines were having to use wetbag materials to shoot with, because of wet holes. Every one of those mines were having personnel problems because people were having to work and operate and to function in the same mud, in the same flood, and in the same conditions that were happening in Miami, OK. The very same day that the Federal Government, the senators, the politicians, the Lieutenant Governor were flying over Miami to give them relief, the OSM stationed in Muskogee, OK rented a helicopter to fly over the mines to see if they could find a violation, to see if they could find a way to punish those miners, to see if they could find a way to find a gully or a pipe discharging water that looked discolored. I would like to know where the fairness of this situation can be. I would like to know why one person's disaster requiring Federal aid also can be a vehicle allowing or giving the Office of Surface Mining the ability to write alleged violations for the same particular situations and circumstances. No one. No one can exist under that type of regulations.

The mining laws written by the Congress of the United States in Public Law 95-87 were not meant to be punitive. It was not meant to punish a person because he chose to mine coal to be his profession. It is not even a law that is written with definite guidelines. It is a law that states very simply that its purpose is to provide a vehicle under which the coal can be mined, the land can be restored, and it all be compatible with ecology. That is all the law simply states.

The problem with regulations as we have it here today is that it is interpreted in many ways. I'll give you a parable. If you go out on Highway 69, before you come very far, you come to a sign that says 55 miles an hour. That 55 miles an hour means just that. If you drive 56 or 60 or 65 miles an hour, you're in violation of the law, and you're subject to a speeding ticket or a violation and a fine. If you drive 35 miles an hour, you are all right. If you drive 55 miles an hour, you are all right. You are in compliance with the law. The sign says that specifically. In the mining law, there are no 55 miles per hour sign. The way we handle our mining laws is that each patrolman writing the violations is making his own interpretation of what 55 miles per hour means. He is creating his own speed limit, and one man may say you can go 25 miles an hour, and if you go over 25 miles an hour, I'm going to cite you. The next man may use 50 miles per hour. The next man may use 75, and someone else may use 100. Every person interpreting the law and regulating it as he sees fit, and you have no comeback. You are guilty until you prove yourself innocent.

Our business happens to be very important, not only to the people named Turner, but to 320 people employed by Turner Bros.,

and their families, to its creditors, and to its royalty holders. We couldn't stand this, but the situation existed, again starting back in 1983 or 1984. We were the vehicle under which the Oklahoma Department of Mines was going to be controlled by OSM.

Senator NICKLES. Mr. Turner, I wonder if I might interrupt you, because I see you've got a great big old statement there, and I want to ask you a bunch of questions, and I also have another panel or two behind you.

Mr. TURNER. I will submit to you, sir. I would like to read my statement into the record, but that's fine.

Senator NICKLES. Well, we are going to put the entire statement into the record, and I'm going to get back to you if I can in just a minute. Will that be all right?

Mr. TURNER. That's fine.

[The prepared statement of Mr. Turner follows:]

SENATOR DON NICKLES' HEARING

Muskogee, Oklahoma, June 14, 1985. Office of Surface Mining, Oklahoma Department of Mines Regulatory Situation

My name is Charles Turner. I am General Manager of Turner Brothers, Inc., Muskogee, Oklahoma. So that the record will be straight, Turner Brothers, Inc. is and has been in Chapter 11 Reorganization since February 4, 1985. Turner Brothers, Inc. is and has been the principal vehicle which the Office of Surface Mining used in implementing the takeover of a portion and ultimately all of the Oklahoma Department of Mine's functions. The action of Office of Surface Mining and the inaction of the Oklahoma Department of Mines, (because of the criteria forced upon them by the Office of Surface Mining) have created problems that have forced Turner Brothers, Inc. into Chapter 11 Bankruptcy.

We are here today to give testimony regarding what it takes to return to the Oklahoma Department of Mines its state regulatory program. To answer this question, I feel that it is essential that the record indicate why the State of Oklahoma is in this position.

There are two primary things that created the problem existing in the State of Oklahoma at the time of the 733 Hearing in December, 1983. The first problem was a weakness that was created because of the failure of the Governor of the State of Oklahoma to appoint a qualified Chief Mine Inspector with enough strength to literally look the Office of Surface Mining in the eye and defend the citizens of Oklahoma's state rights to administer their own state

regulatory program. The second was with the implementation of Public Law 95-87, two gentlemen from the Office of Surface Mining came into the State of Oklahoma from the federal government. These two gentlemen, namely Robert Markey, Director of Office of Surface Mining in Tulsa, and Gerald Thornton who is the solicitor for the Office of Surface Mining located in Tulsa. They came to the State of Oklahoma and have been power hungry ever since they arrived. Mr. Thornton has been credited with making statements in the Spring of 1983 that mining should not be conducted in the State of Oklahoma. They have been a continual source of aggravation and created turmoil within the State of Oklahoma, literally forcing the State of Oklahoma to accept the federal law, written as a general law covering the entire United States, rather than having the proper windows in it to govern the State of Oklahoma. They continually looked for a method in which they could obtain power to take over the Oklahoma Department of Mines and prove that they had the force of the federal government behind them and could force the State of Oklahoma and the mining industry in Oklahoma to be put in a state of turmoil and nearly non-existence.

They were provided a vehicle under which their case against the State of Oklahoma was cemented when in December of 1983 at a 733 Hearing concerning the takeover of Oklahoma, Cherokee Coal Company, a competitor, gave slanderous and untrue testimony regarding Turner Brothers,

Inc. in an attempt to put them into a position of insolvency and destroy their credibility. In that 733 Hearing, three gentlemen, Mr. Sam Shaw, Mr. Larry Polmier, and their attorney, Mr. Thomas McGeady talked for 45 minutes and discussed nothing except the fact that TBI was in violation, and that the Oklahoma Department of Mines was failing in every instance to implement the law against TBI, and requested that the Office of Surface Mining take them over.

Gerald Thornton happens to be a good friend of Mr. Thomas McGeady. They attended school back east at the same time. They have numerous meetings such as the meeting they had in early July, 1983, wherein Mr. Thornton advised Mr. McGeady as to how to use P/L 95-87 to Cherokee's benefit.

When these slanderous and untrue and unsworn statements were made regarding TBI, Mr. Thornton had his method of stopping the Oklahoma Department of Mines. What was worked out and what happened was that Cherokee Coal Company using the law, and in the name of a citizen's complaint in January 1984, requested and inspected with the Office of Surface Mining personnel, (Mr. Sam Petitto), six of the mines involved in TBI's operation. Anything that Cherokee Coal Company pointed out as their idea of a violation was written by the Office of Surface Mining into Ten Day Notices to the Oklahoma Department of Mines and by law those Ten Day Notices required the Oklahoma Department of Mines to respond to them. There were 160 such Ten Day Notices written.

Because of the weaknesses of the Oklahoma Department of Mines, because of the fear that Mr. Thornton, Mr. Markey, and Mr. Carl Close of Washington, D.C. had put into the Oklahoma Department of Mines about their inefficiencies, their apparent compatibility with the mining industry, the many things that they claimed were wrong, because of the fear of this takeover that was being drafted, they immediately went into the field and wrote some 64 of those Ten Day Notices into alleged violations.

Prior to Cherokee's complaint, TBI's mines had been inspected by not only the ODCM but also the OSM on a regular basis. Instead of the Oklahoma Department of Mines saying to the Office of Surface Mining, we are the inspectors in the State of Oklahoma, we are the people who have inspected these mines, and these violations do not exist as we see them to be violations, they wrote them. OSM immediately came back to say this proves that the ODCM does not have the ability to properly administer the law and do the on site inspections required because they wrote 64 of the 160 ten day notices after we showed them what the problems were.

The vehicle was to justify OSM's existence and its bureaucratic thirst for power provided at that instant; and OSM could justify its takeover of ODCM. TBI from that point forward had problems. TBI was at odds and fought with the ODCM and eventually took them to court to get two permits. TBI lived up to what the Court ordered. The ODCM through the direction of OSM failed to live up to what they agreed

to do and were required to do under the settlement agreement. ODCM failed to provide the revisions and for over a year later has failed to respond to our requests to do so. ODCM failed to provide the yes or no answers required within the judge's order. ODCM failed simply to alleviate the hot seat that TBI was on even though TBI did the things required by the order of the court, and TBI's reclamation was and has been on schedule.

The OSM theoretically only took over the inspection and enforcement portion of the state program; however, OSM infiltrated without resistance the offices of the ODCM in Oklahoma City, and their personnel literally dictated to the employees of ODCM as to what they could and could not do. The ODCM became a pawn in the hands of the OSM and became a nonfunctioning agency as far as any initiative, as far as any ability to expedite on their own anything needed by the mining industry in Oklahoma ODCM. Their personnel were directed to go to the OSM schools. Their new people were indoctrinated with OSM policies that were not necessarily fitting for the State of Oklahoma, and all of a sudden the Oklahoma mining industry was put into a position of a virtual standstill.

The OSM had to show the State of Oklahoma their might and their power so they opened federal offices, they moved in some 22 people, they moved in eight or ten and at one time with all of the drill trucks, etc., we counted 27 vehicles in the Muskogee area. They had a budget that would

allow them to call helicopters out of Tulsa, renting them at \$150.00 per hour, to go make inspections to prove that the ODOM didn't know what they were doing. They were going to show the ODOM how they should regulate the coal industry in the State of Oklahoma. It is my understanding from reports I get that the OSM has a budget of \$400,000 annually per employee. It would be impossible for the State of Oklahoma or any other state in the union to be in competition with this type of an inspection program. They didn't show the State of Oklahoma how to do their inspections within the frame work that they had, within the budget that they had, they showed them how to do it when you have an unlimited budget of the federal government behind you.

I would like to give you a perfect example of the inspection and enforcement that our federal government brought to the State of Oklahoma. In March of 1985, Northeast Oklahoma was hit with a major flood. The Miami, Oklahoma area was completely inundated. Some 300 families were moved away from the river out of their homes. Our Lt. Governor, our Congressmen, our Senators, they all hit Miami, Oklahoma. The Lt. Governor flew up in a helicopter, and they immediately asked for emergency federal disaster relief. The people should have emergency relief. They were damaged. There was no question about the perils the people were put in. There was no question about the fact that they needed help. But there were also five coal mines in that area. We had Bill's Coal Company, we had Patches' Mine, we

had Rancher's Coal Company, and Peabody, and we had TBI. Everyone of those mines had lost their production because of water. Everyone of those mines was running in mud which created a higher fuel bill. Everyone of those mines was having to use wetbag material to shoot with, because of wet holes. Everyone of those mines were having personnel problems, because people were having to work and operate and to function in the same mud, in the same flood, and in the same conditions that were happening in Miami, Oklahoma. The very same day that the federal government, the senators, the politicians, the Lt. Governor were flying over Miami to give them relief, the OSM stationed in Muskogee, Oklahoma rented a helicopter to fly over the mines to see if they could find a violation, to see if they could find a way to punish those miners, to see if they could find a way to find a nine inch gully, a pipe discharging water that looked discolored. I would like to know where the fairness of that situation can be. I would like to know why one person's disaster requiring federal aid, can also be a vehicle allowing or giving the OSM the ability to write alleged violations for the same particular situations and circumstances. No one! No one can exist under that type of regulation.

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states very simply that its purpose is to provide a vehicle under which the coal can be mined, the land can be restored, and it all be compatible with ecology. That is all the law simply states.

The problem with regulations as we have it here today is that it is interpreted in many many ways, I'll give you a parable. If you go out on Highway 69, before you go very far, you come to a sign that says 55 miles per hour. That 55 miles per hour means just that. If you drive 56 or 60 or 65 miles an hour, you are in violation of the law, and you are subject to a speeding ticket or a violation and a fine. If you drive 35 miles an hour, you are alright. If you drive 55 miles per hour, you are alright, you are in compliance with the law. The sign says that specifically. In the mining law, there is no 55 miles per hour sign. The way we handle our mining laws is that each patrolman writing the violations is making his own interpretation of what 55 miles per hour means. He is creating his own speed limit, and one man may say you can go 25 miles an hour, and if you go over 25 miles per hour, I am going to cite you. The next man may use 50 miles per hour. The next man may use 75 and somebody else may use 100. Each person interpreting the law and regulating it as he sees fit, and you have no come back.

It is not a case of being innocent until proven guilty. The Oklahoma Mining Laws, as administered by the Office of Surface Mining, is that you are guilty until you prove yourself innocent. You are subject to my every whim. If I

say you have that mulched enough, it is a violation whether anyone thinks so or not. You gave up your rights as a citizen. You gave up your rights as an engineer. You gave up your rights as a geologist. You gave up your rights as an owner or operator. You gave up your rights to your opinion and to your judgment and your ability to exercise your judgment because what I say is the law. As an inspector, I can't tell you what I want or how to alleviate a problem. I'm not an engineer, I work for the federal government as an inspector, you do what you think is correct, I'll check again. If I don't like it, you can do it over. And that is the way it is handled in the State of Oklahoma.

TBI has filed their Chapter 11 suit against the federal government, OSM, ODOM, and certain individuals. They did that because of the fact that we were again at a stalemate. We were into a position of no communication, no help, no processing of revisions, no processing of permits, with the State and Federal agencies creating every roadblock that you can create to keep the mining companies from mining.

Our business happens to be very important, not only to the people named Turner, but to 325 persons employed by TBI and their families, to its creditors, and to its royalty holders. We couldn't stand this, but the situation existed, again starting back in 1983 or 1984. We were the vehicle under which the ODOM was going to be controlled by OSM. In early 1983, the OSM wrote us a violation on a piece of

property that we had acquired from another miner that went bankrupt. Mr. Thornton ordered a violation to be written TBI on that piece of property even though we had never been on it, even though we had never moved a pile of dirt on it, even though there was no permit on it with Turner Brother's name on it, TBI had not bonded it, there was nothing there to tie TBI to that permit in any shape or form other than a contract with the other coal companies bankruptcy court saying that we will be responsible for the reclamation of that particular section of land within the strict compliance of the federal and state government if and when we mined said property. We still intend to mine the property and reclaim it when we mine it.

The OSM took the position that we had to reclaim it whether we ever mined it or not. They took the position when they wrote the violation that we did not need a permit, that we had to go on the property and reclaim even if we didn't mine it. It was another nail in TBI's coffin, and it was another nail in the ODOM coffin, a perfect show of Mr. Thornton's power.

The ODOM justifiably said to Turner Brothers, Inc. that we should not go on that property to do anything without a permit. The OSM said yes you will. You will enter it and reclaim it whether you ever mine that or not. They came down to a situation to where it was a "Kentucky standoff." The Office of Surface Mining said you will never get a permit to mine coal in the State of Oklahoma. We will not

give ODOM permission to give TBI a permit even though TBI is under State of Oklahoma rules and in compliance otherwise. The bankruptcy judge at that point said that the Office of Surface Mining and the Oklahoma Department of Mines would tell TBI specifically what they have to do, and you will do this by a certain date.

OSM went to their files and wrote us a letter, and said that the outstanding violations of TBI are as follows, and they listed them. Peculiarly enough, the alleged violation at Leon's Coal Co. was not on the list. It was not on the list because we never had a permit. That didn't make any difference to the federal government, that was just an oversite, and they remembered now seven days later. They wrote another letter which added Leon's violation. Because I think these alleged violations indicate so profoundly how the operators in the State of Oklahoma are being hassled, I'm going to read these violations into the record. These are the violations under which OSM has sent to the ODOM so ODOM would not issue a permit to TBI.

It should be explained before I elaborate on these alleged violations that TBI is mining 1.2 million tons of coal per year, cover in excess of 700 acres because of Oklahoma's thin seam coal.

The list as ordered by the bankruptcy judge and submitted by the Office of Surface Mining in Muskogee contained 18 MCV's and 4 Co's - (28 items).

Two of the NOV's and two of the CO's were written on a property owned by TBI and were part of a settlement order by a state judge in which TBI followed the order, and the Oklahoma Department of Mines and Office of Surface Mining ignored the state judge's settlement order. All of the items were the result of TBI going off the permit area to clear, drain and construct an final pit empoundment for irrigation and sediment control purposes - the state took the position that TBI as a property owner had no rights and and could not leave the permit area to improve their own property. The entire plan was submitted as a revision, it was never acted on.

Three NOV's and two CO's (5 of 18) were issued on what is called the Martin farm. These NOV's involved failure to return to A.O.C. (approximate original contour) and no contemporaneous reclamation. We were reclaiming. The OSM inspector said the approximate 250 acres we had reclaimed was OK. Then we had the rotation of OSM inspectors, and a new group comes in, and all of a sudden the reclaiming we were doing was unacceptable. We were written violations. TBI shut down and not being able to resolve the issue wrote a letter in early December to the Office of Surface Mining stating we would not continue to reclaim until we had an agreement between the property owner, OSM and CDOM as to what was acceptable. We did not intend to reclaim but once. We got no response, however, they did find time to write the CO's fining us \$44,000. CSM admitted they ignored the

letter. Denver Teck resolved the problem on February 22, 1985, only after the bankruptcy judge ordered a list and compliance schedule.

Two NOV's were written for failure to certify ponds that the certification were later found to be in the state's files.

One NOV was written for failure to certify a pond on February 12th, 1985 (while we were in court with OSM). The pond had been built on January 24, seventeen days earlier and was in process of being certified.

A fourth paper work violation was written because the square drawn on permit application location map designating the location of spoil stock pile did not scale out to be as large as a physical measurement of the stockpile as measured by the inspector.

The list contained a violation for noncontemporaneous reclamation where we left a section of highwall open to contour mine in another direction. We were continuously moving on the property, never ceased mining on the permit, but the Office of Surface Mining rationale was that the permit called for contemporaneous reclamation no more than three pits behind, and our active pit was more than a three pit width from the highwall left open. The remedy was fill the highwall, and when you start to mine the other direction, move the dirt out and open the highway back up or make a new box cut.

We had on the list a total of five what we call compliance violations sited - two of the five were approved previously in 1982, by the Office of Surface Mining Denver Tech Service and the Oklahoma Department of Mines, to meet needs of mountain top removal in an area where the Pine trees are already six feet tall in the reclamation scheme.

One NOV was written on a pond redesigned and rebuilt demanded on a permit mined and regraded two years ago. Another was written because a post mining pond was not constructed in an active mine where the grading was completed.

One NOV was written because a small 200 foot long diversion was now demanded to divert incidental drainage into a pond on a permit that was reclaimed and revegetated eighteen months ago.

Then in a fall and spring having rainfall 15.52" in excess of normal (145-12%) as reported by Tulsa Weather Service, we received three alleged violations for depressions, very small (35 feet across and less than three inches deep) water pockets, representing subsidence in backfilling. The remedy was to regrade an already revegetated area. I can show you 10,000 of these depressions between here and Checotah and never get off of US 69 in areas never mined. We had also four alleged violations for rills and gullies, erosion from excess rain, I might add all caught in the sedimentation ponds and located within the mine permit, required by law to protect

streams from the erosion sediment the authors of the law knew was inevitable.

Then on the list was three alleged violations for grazing. Two of these were on properties that received, eighteen month before the violations, SCS awards for the property owner because of the outstanding productivity and vegetative growth on the property. TBI cannot get its bonds released, and the U.S.A. citizen property owner has no rights. TBI is supposed to get the property owner's animals off his own property. The other grazing violation was on a property where the owner had no cattle. They were fenced out and found the only green grass in ten sections of land. Turner Brothers, Inc. got violated for them. Mr. Thornton's stated solution to the problem was to kill the cows. A violation was added to this list seven days latter from Leon's Coal Company permit that TBI had never been involved in except by civil contract with Leon's Bankruptcy Court.

That is the complete list of alleged violations against a company who has posted with the Oklahoma Department of Mines in excess of \$8,000,000 in reclamation bonds and is now being ask to post an additional 1.7 million more on 269 acres. TBI is maintaining and cannot get released over 3,000 acres of reclaimed property in the State of Oklahoma. When you have these problems, it certainly gives Mr. Thornton, Mr. Close, Mr. Markey, the power to say "you'll not get a permit, and TBI should put 325 people out of work. They should take \$35,000,000 out of Eastern Oklahoma

Economy. They should ignore 3.5 million in taxes each year. They should take away 1.2 million tons of trucking. They should take business from fuel people, from auto part's stores, from part's houses, from tire dealers, from auto dealers, and the barge traffic on the Arkansas River. Criminals on death row with murderer behind their names have more rights than coal companies and their employees, suppliers, and property owners as Public Law 95-87 is handled in Oklahoma at the present time.

At this point in this "soap opera," we have a new player or more appropriately a new puppet of Cherokee Coal Co. The Attorney General's Office, in the State of Oklahoma, assigned to ODCM, a young lady by the name of Sarah Drake who has been involved in all of the negotiations between TBI, OSM, the Bankruptcy Court, etc. At this time, she decided upon advise from Cherokee and its attorney, Mr. McGeady, that there should be a change in policy regarding advertising of permits. Sarah Drake says that the fact that Oklahoma Mining Regulations state that the advertisement should be published in a paper that is within general circulation within the county in which the mining is to be done, that the advertisements of TBI for the Rogers County permit which is involved in the entire litigation had to be changed even though for years, it has been accepted by ODCM. The new policy would be retroactive, and TBI would have to readvertise because they published their advertisement in the Tulsa World rather than in a paper that was printed in

Rogers County. This was done even though the federal government, namely the EPA and OSM and many other such regulatory people advertise all of their notices for the entire State of Oklahoma, regardless of what county it is located in, in the Tulsa paper. So a roadblock was thrown up by the attorney general's office saying that TBI's advertisement was not correct.

When TBI readvertised, low and behold they had a lands unsuitable petition filed against them. The lands unsuitable petitions were filed by the Rogers County Homeowner's Association and the Oklahoma Wildlife Federation. Would you believe, the attorneys for those two associations happened to be Sarah Drakes' friend Thomas McGeady, his boss Mr. Lowry, the lawyers for Cherokee Coal Company? This all happened at a time when TBI was in Chapter 11 and were starting to deliver coal on contracts that had been taken in competitive bidding from Cherokee Coal Co.

There have been a lot of interesting developments since that time. There have been meetings held with Mr. Lowry representing the Oklahoma Wildlife Federation and the Rogers County Homeowner's Association. The Rogers County Homeowner's Association was formed primarily because of blasting conducted by TBI and other mining companies in Rogers County.

The lands unsuitable petition basically states that because TBI was complying with the law, it was unsuitable

for that land to be mined and the result would be such that the Rogers County Homeowner's Association would be damaged.

The ruling on the advertisement caused TBI to have a hearing, but the meeting with Mr. Lowry is a very peculiar thing. It was discovered that even though TBI had a \$500,000 liability insurance policy for each instance or each site, and a \$5,000,000 umbrella to protect any homeowner regardless of where TBI was mining, the requirement for the Rogers County Homeowner's Association to permit TBI to go ahead and get their permit, was the placing into escrow \$115,000 which could be drawn upon by the homeowners regardless of what the insurance companies discoveries found, regardless of where the homeowner was located, whether it was adjacent to the mine site, or three miles away, and regardless of whether TBI had any liability or not.

The other small thing that had to happen was that Mr. McGeady and Mr. Lowry's fees up to that point had to be paid, and they were only \$60,000.

The law provided a vehicle here, the laws interpreted by Ms. Drake provided a vehicle where if we would permit blackmailings of \$200,000, all of a sudden the lands unsuitable petition would disappear. There was no problem with mining. They really had no problem with our blasting, they just needed \$200,000. It is a sad commentary on the law. It is a sad commentary on the attorney general's office. It is a sad commentary when a regulatory agency is

forced by policy changes or new interpretations requiring policy changes to put mining in jeopardy.

All of these things have lead to a negotiation of settlement with the federal government. The ODCM at this point, I feel has very little complaint against TBI as far issuing permits, but the negotiations and a proposed settlement by Mr. Gerald Thornton is a very interesting thing. I will not read in its entirety into the record but I certainly want to bring in certain aspects of it to show the position and the power that Mr. Thornton feels that he has, and in many instances completely ignoring the law, the rights of an individual under the Constitution of the United States and the Constitution of the State of Oklahoma, bearing in mind the fact that in his mind, he is the law. I want to read some of these into place.

I believe that the list of violations which I have read into the record and the proposed settlement agreement as expressed by Mr. Thornton is a true indication of the situation as it exists in the State of Oklahoma today. I have been asked the question, not necessarily by people in the State of Oklahoma, but people away from here, if they thought TBI was being persecuted. I am here to tell you that the entire mining industry in the State of Oklahoma is being persecuted. The actions of the OSM, the things that they have done, the literal destruction of the mining industry, not only in the State of Oklahoma, but also in the State of Tennessee, (where they made the same takeover

actions) has created havoc that they would now like to get out of, I am sure. Some of the policies, some of the things that they have dictated, some of the things that they have done have literally been felt over the entire United States. They are using their actions, taken in the State of Oklahoma, as a means to say to other states, "this is what we can do." This is the power that we have. You have no rights. We are the law. We are the dictators and you will do our bidding. You know the strange thing about it is, they fund many of the Department of Mines that they regulate and money is a strange strange thing when its comes to defying the person that you are answering to. It becomes all important, and it also becomes blackmail that you may not have a job if I take my money away from you.

For the mining industry to become healthy within the state of Oklahoma, there are several distinct things that must happen. Number one, primary in my mind, we in the State of Oklahoma have to regulate our own industry. Number two, the people who have been bent on bringing the State of Oklahoma to their knees ever since they got here, namely Mr. Markey and Mr. Thornton, have to be gone. It does not make any difference if the OSM in Washington, D.C. decides to give this program back to the ODCM, if Mr. Thornton and Mr. Markey and their select hatchet men are left as oversite people to the ODOM. It will mean complete destruction of the industry. I'm sure that these are harsh words. I'm also sure that TBI will probably have retaliation against

them, but I am here to tell you that TBI, their employees, their creditors, their royalty holders have lived in hell for the last year and a half, and it really doesn't make any difference what they do to TBI at this point. TBI cannot be abused anymore than it already has been.

I feel like the ODOM does have the ability. They do have personnel. They can regulate this industry. They cannot not, however, regulate this industry if they are put on a jerk rope and handled in such a manner that any decision they make can be overturned. They have to be boss, and the governor of this state has to face up to the fact that he has to back whoever he puts in charge or whoever is the chief mine inspector, and that mine inspector has to deal with strength. They have to deal with strength with their own people. They have to deal with strength with the federal government. They have to deal in strength when dealing with the miner. They have to be consistent and they have to be a booster of the industry rather than feel they must punish the industry as they have been indoctrinated by the Office of Surface Mining. The ODOM should be the greatest promoter of the mining industry existing in the State of Oklahoma. They are not doing it. They do not have a chance to do it, and the main reason is that the federal government, through the Office of Surface Mining, through the power hungry people named Gerald Thornton, named Carl Close, named Robert Markey are applying pressure that is unacceptable and truly, does not promote coal in the State of Oklahoma.

Senator NICKLES. Mr. Jackson.

STATEMENT OF ROBERT A. JACKSON, DIRECTOR, CORPORATE AFFAIRS, SUNBELT MINING CO., INC., ON BEHALF OF TRANS-WESTERN MINING CO.

Mr. JACKSON. Senator Nickles, my name is Robert Jackson, and I'm a director of corporate affairs for Sunbelt Mining Co., Inc. of Albuquerque, NM. I am here today to represent our wholly owned subsidiary, Transwestern Mining Co., which is the company of which Charley Turner speaks. We are now in the process of purchasing most of the assets of Turner Bros. and we will be owning and operating most of the Turner Bros. operations, and Turner will in turn become a contract miner for Transwestern.

I will revert my comments just a second to address myself to Charley. Charley, we certainly, it would not be my intention to stifle your comments in any way, but to somehow cast on our company in terms of the regulatory people. Your record is good, and you're an honest and candid man, and we have a great deal of respect for you. We in no way want to stifle your statements. In the past, Turner Bros. has obviously received many notices of violations and cessation orders from the Oklahoma Department of Mines and the Federal Office of Surface Mining. As you heard from Charley, I think there is a great deal of concern over whether Turner Bros. had been treated fairly over the past, by the regulatory agencies. We're not in the position to offer any judgment one way or the other, because we're relatively new to Oklahoma. However, in the terms of our contract, the mining agreement with Turner, the ultimate responsibility to comply with the regulatory agencies and their regulations and it is our intention to avoid in any extent that we possibly can with regulatory agencies in the field, the circumstances that may have led to Turner Bros. long-standing problems with the agencies. We expect our management here to duplicate as closely as possible the nearly perfect record that Sunbelt has achieved with its operations in northwest New Mexico, primarily where we do business outside of Oklahoma.

We think this is achievable for a couple of reasons. Turner Bros. perhaps contributed to their own problems, due to the rapid growth which I think Charley would acknowledge in opening up a number of small operations in a relatively short period of time. Our plans call for a consolidation of a number of Turner operations, and a little bit more slow paced approach to further expansion.

Second, the regulatory agency, we understand, was relatively new to regulating, and was being pushed to perform by OSM, which itself had been under a great deal of pressure from Congress and public interest groups in Washington. Since both regulatory agencies are now more experienced, and in OSM's case, hopefully at least they appear to have a broader base of political support, and a clear sense of direction, in implementing the Surface Mining Act.

I would now like to list several aspects of mining regulations we feel are critical and important in building a prosperous industry. These are underlined in some detail by written remarks, and I won't go into the detail on that, but just summarize.

First, we think it is essential and very critical to develop a fair, predictable, and consistent regulatory program whereby when costly faced with changing rules, and regulations on various aspects of the program. Additionally, the management of these agencies needs to fulfill its obligations to insure the inspectors are better trained and approach their jobs professionally.

Second, the industry is in great relief from unrealistic reclamation bonding requirements, and an acceleration of the bonding release process. This is especially a problem for the smaller local and region operators, like you have here in Oklahoma. The lack of financial resources available to post rapidly escalating bonding requirements.

Third, and this is on a little bit broader national scale, rejection of OSM's present attempt to recoup as a service charge all of the expenses that OSM and other Federal agencies involved in processing mine permit applications and permit reviews. At this point, we are even unable to forecast what these costs might be. If they are successful in shifting these costs back to the operators, on so called service, we can quickly expect the State to follow suit, and that's going to be an impediment to the Oklahoma coal operators.

If these points are properly implemented, I think it would help stabilize the industry, and help stave off for release of financial and operating burdens, placed on industry by the regulators. To conclude, we're optimistic that the regulatory climate in Oklahoma will improve, and there has been some improvement I think some of the operators would admit to that, in the last few months. We have found Gayle Townley and the staff at the department of mines accessible. They are concerned about the prospects of the Oklahoma coal industry from our point of view, and that's the impression that we've been left with. To the extent that they can diligently perform their duties without the undue influence from OSM in the day-to-day operations of the agency, the Oklahoma coal industry will definitely benefit. As to OSM, we are hopeful to their leadership under Secretary Hodel, and Mr. Christensen that OSM will become less under political pressure, and time will tell. To the extent that they're able to defuse the pressures placed upon them from outside interests, they will better be able to have a regulatory program that will be both capable of upholding the mandates of the Surface Mining Act, and at the same time, reducing the burdens placed on the industry.

Thank you.

[The prepared statement of Mr. Jackson follows:]

STATEMENT OF ROBERT A. JACKSON, DIRECTOR, CORPORATE AFFAIRS, SUNBELT MINING CO., INC., ON BEHALF OF TRANSWESTERN MINING CO.

Good afternoon. My name is Robert Jackson, and I am Director of Corporate Affairs for Sunbelt Mining Company, Inc. (Sunbelt) of Albuquerque, New Mexico. I am appearing today on behalf of Sunbelt's wholly-owned subsidiary, Transwestern Mining Company (Transwestern). Transwestern is now in the process of purchasing most of the assets, including sales contracts, coal leases, and mining permits, of Turner Brothers, Inc. (Turner Brothers) of Muskogee, Oklahoma. In turn, Turner Brothers would become Transwestern's contract miner for all Oklahoma operations. Turner Brothers is Oklahoma's largest coal producer, accounting for approximately a quarter of the nearly 4 million tons of coal mined in Oklahoma in 1984.

In the past, Turner Brothers has received numerous notices of violation (NOV) and cessation orders (CO) from the Oklahoma Department of Mines (DOM) and the federal Office of Surface Mining (OSM). The majority of these were received prior to OSM taking over the Oklahoma mine inspection/enforcement program in 1984. In our view, Turner Brothers past regulatory problems were a result of several factors, including general friction with the agencies, Turner Brothers rapid growth, and a changing sense of the way coal surface mining regulations should be applied in Oklahoma. We offer no judgment as to whether Turner Brothers was deserving of the NOV's and CO's they received in the past. However, under Turner Brothers contract mining agreement with Transwestern, the responsibility for ultimately ensuring compliance with the terms of the mining permits will be Transwesterns. As such, it is Transwestern's intention to live up to both the letter and spirit of both the Surface Mining Control and Reclamation Act, the State Act, and DOM's coal surface mining regulations. We will make every effort to avoid, to the extent possible, the circumstances that resulted in Turner Brothers long-standing problems with both DOM and OSM.

We expect Transwestern's management to duplicate in Oklahoma the nearly perfect record of regulatory compliance earned by Sunbelt's two mining operations in northwest New Mexico.

In terms of past regulatory practices in Oklahoma, we have been told of many instances of over zealous actions on the part of the regulatory agencies, particularly prior to OSM taking over the mine inspection/enforcement program. We suspect a form of "punitive enforcement" developed from competition between DOM and OSM whereby DOM, in attempting to demonstrate to OSM its ability to run its own inspection/enforcement program, wrote NOV's and CO's for even the most minor of infractions, while OSM, in attempting to justify its takeover of Oklahoma's inspection program, was perhaps overly critical of Oklahoma's problems.

We hope this has now come to an end. Our observation is that operators are now making a better effort to comply with the regulations and the regulators are becoming more aware of the problems operators are forced to contend with. To the extent both operators and regulators are more understanding of each others problems and concerns, the situation will improve.

In terms of future direction, we support Oklahoma's intention to retake its inspection and enforcement program under the state's permanent regulatory program. In our opinion, industry is better served by a state-administered program in terms of sensitivity to and familiarity with local mining practices and procedures, and a greater understanding of the variables of each individual mining situation. We also feel a state program, relatively insulated from the political climate of Washington, allows a more direct focus on mining-related issues, leading to creation of a stable, predictable regulatory program.

I would now like to address those elements of mining regulation we feel are most important for and/or burdensome to industry.

First, predictable consistency in applying the regulatory program is paramount for industry to endure and thrive. Each change in administrators or administration introduces a new emphasis in the regulatory program. Standards upon which long-term decisions have been made that carry significant financial impacts are frequently revised, discarded, or de-emphasized, and new standards instituted. The resulting chaotic situation can work an extreme hardship on operators without the agility or resources necessary to adapt. As an example, we note OSM's history of frequently reshuffling top management, followed by new directives and program emphasis. These changes are often the result of political pressures from Congress and/or so-called public interest groups trying to force OSM into a posture that is anything but helpful to industry and the consuming public. While industry is able and willing to comply with the regulatory process, we cannot be put into the position of having to second-guess and anticipate new or revised policy directives.

Second, reclamation bonding requirements are becoming very burdensome. Bond amounts are almost always set at exorbitantly high levels based on unrealistic cost estimates with little correlation to the actual costs of a reclamation failure. We urge a more realistic approach to setting bond requirements. This could be done in such a manner to both ensure that reclamation would be achieved while lessening industry's financial burdens in posting bonds. Specifically, we urge consideration of the stability of a company and the long-term value of its contracts and commitments (i.e., its risk of forfeiture) in setting bond amounts. We also urge a system of more realistically tailoring

the bond amount to the actual reclamation cost exposure at any one time. Finally, we would propose allowing operators to establish sinking funds to cover reclamation costs. These funds would be used to at least partially offset bonded liabilities.

Third, OSM is proposing to recoup all costs associated with processing of permit applications and mid-term permit reviews. OSM's proposal also includes recouping expenses of other federal agencies involved in these processes. By OSM's own admission, the costs to industry of this proposal are not quantifiable. They would, however, be particularly onerous to small operators and/or operators with multiple small operations. If OSM is successful in charging industry for this alleged "service," it won't be long before the state follows suit. These costs, passed along, would undoubtedly further reduce the already decimated ranks of Oklahoma's coal operators.

In conclusion, in the course of Transwestern's investigations and negotiations with Turner Brothers over the last six months, we have had many contacts and discussions with people from both OSM and DOM regarding regulation of coal mining operations in Oklahoma. In general, we have found them to be open, willing to discuss the issues, mindful of their obligations to both industry and the public, and, overall, attempting to be fair in the way they carry out their mandate under the law. This is not to say that problems have not existed in the past or will not occur in the future. Transwestern hopes, however, to be able to foster a good working relationship with the regulatory agencies to the mutual benefit of the public, our industry, and the state.

Senator NICKLES. Thank you, very much, Mr. Jackson. I appreciate your comments, and we welcome you to Oklahoma.

Mr. Johnson.

STATEMENT OF TROY JOHNSON, VICE PRESIDENT, JOHNSON'S TRUCKING INC., ON BEHALF OF THE ARKANSAS, OKLAHOMA PORT OPERATORS ASSOCIATION

Mr. JOHNSON. Senator Nickles, I need to break up my testimony. I have submitted it all for the record, and I can definitely break it two different ways.

First, my name is Troy Johnson. I'm vice president of Johnson's Trucking, and I need to speak on that, and then I'll speak as chairman of the Committee to Support Coal Mining for the Arkansas, Oklahoma Port Operators Association, and so I will divide it into two sections.

Senator NICKLES. OK.

Mr. JOHNSON. But, first speaking for our company and our employees, we're one of the largest trucking company in Oklahoma engaged in the transportation of coal. We have about 130 employees. We've been hauling coal here in Oklahoma for the last 13 years. In that period of time, we've hauled out about 90 percent of the mines from time to time, and we are well acquainted with all of the coal mines, and most of the coal miners. Of course, we've witnessed this rapid decline of the industry in the last 2 years.

Now, we do believe in principle with Public Law 95-87, but we do not however support the manner in which it is being enforced here. We feel that the Office of Surface Mining has allowed their position to become manipulated by a few people which has a great deal to gain financially, and that this itself should be investigated in depth. There probably isn't a miner here who doesn't know exactly what has perpetrated this whole mess that the mining industry now finds itself in, and it has very little to do with reclamation, but it has a lot to do with coal contracts. Most of us have kept quiet, maybe too long, but, this affects too many people's livelihood in our State. It seems that OSM takes the attitude that everybody is out to avoid the law, while in truth, most coal would probably not be mined much different in Oklahoma because of property owners attitude about their land, with or without Public Law 95-87, or OSM.

It seems that OSM is more interested in writing big citations to justify their job, their office, their budget, than to monitor the mining effort and give us a healthy industry.

The other day I had to take the president of our bank on a tour of the mines, and look at some of the conditions that caused some of the large fines to miners. He and I both felt that there has been a total breakdown in judgment and common sense, in this particular area.

If ever an indepth investigation was warranted to save an industry and the many jobs that that industry creates, this one needs the help to survive. All right, I need to speak to you now as the Representative of the Arkansas, Oklahoma Port Operators Association and as chairman of their committee to support the coal mining effort here in Oklahoma.

Coal production in Oklahoma has a tremendous effect on the traffic of Oklahoma segment of the McClellan-Kerr Navigation Systems. Since this system was opened in 1972, and through 1984, coal has constituted over 31 percent of the total outbound tonnage, while wheat, which Oklahoma is more known for, has made up less than 17 percent.

In 1984, coal averaged 98,876 tons per month, while during the first 5 months of 1985, the average tonnage has dropped to 61,977 tons per month. That's a 37.3 percent decrease, and most of this 1985 tonnage was from now depleted stockpiles.

Now, what's very troubling about these Corp of Engineer figures which is in my report is that there is a direct relationship between outbound and inbound tonnage on the system. May of 1985 was the lowest outbound tonnage on the navigation system since April 1976. The average inbound tonnage for a month during 1984 was 104,685 tons. I'm trying to establish this relationship.

The average inbound tonnage during the first 5 months of 1985 is 83,954 tons. So the inbound tonnage is off by 20,000 plus tons per month, or approximately 20 percent.

Now, what is happening is that the barge lines are finding out that they cannot obtain southbound freight for their barges, so they have to raise the inbound freight rates on the other commodities, thereby making many of the movements uneconomical. Coal has been the one bulk commodity that could be loaded on almost any box or rake type barge whether it's covered or uncovered, and the barge lines have always depended on this tonnage to get them southbound. Now, what does the loss of the coal mean to our ports in Tulsa, Muskogee, Keota, and Sallisaw. It means the loss of over \$1 million in port revenues and to some ports like Keota and Sallisaw, it could mean a loss of over 90 percent of the total tonnage.

To the trucking industry alone it means a lost revenue of approximately \$3 million for transportation of coal to the port facilities.

Coal helped make the navigation system work. In the first years of the system like 1972, 461,839 tons of coal was shipped, which was over 80 percent of the total 521 thousand plus tons of outbound freight.

I might add one more little comment—that one producer sitting at the table that I'm at, produced coal that went down the river, Mr. Turner and his boys over here last year 382 barge loads of coal, and that's over 20,000 semitruck loads of coal that that one man produced to send down the river. A lot of it to foreign countries. You know, you talked about trade deficit, and we're trying to do our part here, and there's other people, other agencies trying to keep us from doing it. This one individual created 17 percent of the total outbound tonnage on the Oklahoma segment of the Arkansas Navigation System that we've spent so much money out here on.

Now, we as port operators, we as people connected with this river, we have to be concerned. If the coal shipments continue to decrease at these levels, it's going to have a serious impact on the total McClellan-Kerr Arkansas River Navigation System. Thank you.

[The prepared statement of Mr. Johnson follows:]

STATEMENT OF TROY JOHNSON, VICE PRESIDENT, JOHNSON'S TRUCKING INC., ON
BEHALF OF THE OKLAHOMA PORT OPERATORS ASSOCIATION

SENATOR NICKLES AND OTHER MEMBERS THANK YOU VERY MUCH FOR THIS
OPPORTUNITY TO SPEAK.

MY NAME IS TROY JOHNSON. I AM VICE-PRESIDENT OF JOHNSON'S
TRUCKING INC., INOLA, OKLAHOMA, AND I AM SPEAKING ON BEHALF OF OUR
COMPANY AS ONE OF THE LARGEST TRUCKING COMPANIES IN OKLAHOMA
ENGAGED IN TRANSPORTATION OF COAL, AND ON BEHALF OF OUR 130 PLUS
EMPLOYEES.

WE HAVE BEEN HAULING COAL HERE IN OKLA AND FROM OKLA TO OTHER
STATES FOR THE LAST 13 YEARS. IN THAT PERIOD OF TIME, WE HAVE HAULED
OUT OF 90% OF THE MINES FROM TIME TO TIME, SO WE ARE AQUAINTED
WITH MOST OF THE COAL MINES, AND WE HAVE WITNESSED RAPID DECLINE OF
THE INDUSTRY IN THE LAST TWO YEARS.

WE DO BELIEVE IN PRINCIPAL WITH PUBLIC LAW 95-87, WE DO NOT,
HOWEVER, SUPPORT THE MANNER IN WHICH IT IS BEING ENFORCED. WE
FEEL THAT THE OFFICE OF SURFACE MINING (OSM) HAS ALLOWED THEIR
POSITION TO BECOME MANIPULATED BY A FEW PEOPLE, WHICH HAS A GREAT
DEAL TO GAIN FINANCIALLY, AND THAT THIS SHOULD BE INVESTIGATED IN
DEPTH. THERE PROBABLY ISN'T A MINER HERE, THAT DOES NOT KNOW
EXACTLY WHAT HAS PERPETRATED THIS WHOLE MESS THAT THE MINING
INDUSTRY NOW FINDS ITSELF IN, AND IT HAS VERY LITTLE TO DO WITH
RECLAMATION, BUT A LOT TO DO WITH COAL CONTRACTS. MOST OF US
HAVE KEPT QUIET, MAYBE TOO LONG, BUT THIS AFFECTS TOO MANY PEOPLES
LIVELIHOOD IN OUR STATE. IT SEEMS THAT OSM TAKES THE ATTITUDE THAT
EVERYBODY IS OUT TO AVOID THE LAW, WHILE IN TRUTH, MOST COAL WOULD

PROBABLY NOT BE MINED MUCH DIFFERENT IN OKLA, BECAUSE OF PROPERTY OWNERS ATTITUDE ABOUT THEIR LAND, WITH OR WITHOUT PUBLIC LAW 95-87 OR OSM.

IT SEEMS THAT OSM IS MORE INTERESTED IN WRITING BIG CITATIONS TO JUSTIFY THEIR OFFICE, JOB, AND BUDGET, THAN TO MONITOR THE MINING EFFORT AND GIVE US A HEALTHLY INDUSTRY.

THE OTHER DAY THE PRESIDENT OF OUR BANK AND I TOOK A TOUR OF SOME OF THE MINES AND LOOKED AT THE CONDITIONS THAT CAUSED SOME LARGE FINES TO MINERS. WE BOTH FELT THAT THERE HAS BEEN A TOTAL BREAKDOWN IN JUDGEMENT AND COMMON SENSE.

IF EVER A INDEPTH INVESTIGATION WAS WARRANTED TO SAVE ON INDUSTRY AND THE MANY JOBS THAT INDUSTRY CREATES , THIS ONE NEEDS THE HELP TO SURVIVE.

I WILL SPEAK TO YOU NOW AS THE REPRESENTATIVE OF THE ARKANSAS, OKLAHOMA PORT OPERATORS ASSOCIATION (AOPOA) AND AS CHAIRMAN OF THE COMMITTEE TO SUPPORT THE COAL MINING INDUSTRY IN OKLAHOMA.

COAL PRODUCTION IN OKLAHOMA HAS A TREMENDOUS EFFECT ON THE TRAFFIC OF OKLA SEGMENT OF THE MCCLELLAN-KERR NAVIGATION SYSTEMS. SINCE SYSTEM WAS OPENED IN 1972 AND THRU 1984 COAL HAS CONSTITUTED OVER 31% OF TOTAL OUTBOUND TONNAGE, WHILE WHEAT, WHICH WE ARE MORE KNOWN FOR, MADE UP LESS THAN 17%.

IN 1984 COAL AVERAGED 98,876 TONS PER MONTH, WHILE DURING THE FIRST 5 MONTHS OF 1985, THE AVERAGE TONNAGE HAS DROPPED TO 61,977 TONS PER MONTH, OR A 37.3% DECREASE. AND MOST OF 1985 TONNAGE WAS FROM STOCKPILES. THEY ARE GONE.

WHAT IS VERY TROUBLING ABOUT THESE CORP OF ENGINEER FIGURES IS THAT THERE IS A DIRECT RELATION BETWEEN OUTBOUND AND INBOUND TONNAGE. MAY, 1985 WAS THE LOWEST OUTBOUND TONNAGE ON SYSTEM SINCE APRIL OF 1976.

THE AVERAGE INBOUND TONNAGE PER MONTH DURING 1984 WAS 104,685 TONS.

THE AVERAGE INBOUND TONNAGE DURING THE FIRST FIVE MONTHS OF 1985 IS 83,954 TONS. SO INBOUND TONNAGE IS OFF BY 20,730 TONS PER MONTH OR APPROX. 20%.

WHAT IS HAPPENING IS THAT BARGE LINES ARE FINDING OUT THAT THEY CANNOT OBTAIN SOUTH BOUND FREIGHT FOR THEIR BARGES, SO THEY HAVE TO RAISE INBOUND FREIGHT RATES, THEREBY MAKING MOVEMENT UNECONOMICAL. COAL HAS BEEN THE ONE BULK COMMODITY THAT COULD BE LOADED ON ALMOST ANY BOX OR RAKE TYPE BARGE COVERED OR UNCOVERED, AND BARGE

LINES HAVE DEPENDED ON THE TONNAGE TO GET THEM SOUTH BOUND.

WHAT DOES THE LOSS OF COAL MEAN TO OUR PORTS IN TULSA, MUSKOGEE, KEOTA, AND SALLISAW, IT MEANS THE LOSS OF OVER 1,000,000 IN PORT REVENUES AND TO SOME PORTS LIKE KEOTA AND SALLISAW IT COULD MEAN A LOSS OF OVER 90% OF THEIR TOTAL TONNAGE.

TO THE TRUCKING INDUSTRY IT MEANS LOSS REVENUE OF APPROX. 3,000,000 FOR TRANSPORTING COAL TO PORT FACILITIES.

COAL HELPED MAKE NAVIGATION SYSTEM WORK. IN THE FIRST YEARS OF SYSTEM LIKE 1972, 461,839 TONS OF COAL WAS SHIPPED WHICH WAS OVER 80% OF THE TOTAL 521,438 TONS OF OUTBOUND FREIGHT.

SHOULD WE BE CONCERNED? I THINK THE ANSWER IS CLEAR, IF COAL SHIPMENTS CONTINUE TO DECREASE AT THESE LEVELS, IT WILL HAVE SERIOUS IMPACT ON TOTAL MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM.

OKLAHOMA'S COAL DECLINE

OKLAHOMA'S COAL PRODUCTION HAS DECLINED STEADILY SINCE 1981.
LISTED BELOW ARE PRODUCTION BY YEAR:

1977 - 5,346,654 TONS	1981 - 5,728,461 TONS
1978 - 5,428,678 TONS	1982 - 4,800,000 TONS
1979 - 4,797,156 TONS	1983 - 3,634,567 TONS
1980 - 5,363,714 TONS	1984 - 3,300,000 TONS

WHILE SOME OF PRODUCTION DROP CAN BE ATTRIBUTED TO CHANGES IN BOTH WORLD AND DOMESTIC MARKETS, MUCH OF THE DECLINE HAS TO BE ATTRIBUTED TO THE HEAVY AND ARBITRARY GOVERNMENT CONTROLS. PUBLIC LAW 95-87 BECAME EFFECTIVE THE MIDDLE OF 1977 AND DID NOT, IN FACT, AFFECT COAL PRODUCTION AS MUCH AS MOST PEOPLE THOUGHT IT WOULD BECAUSE MANY MINERS WERE ALREADY STARTING TO OPERATE IN WAYS DIRECTED BY PL 95-87 JUST TO OBTAIN COAL LEASES FROM PROPERTY OWNERS.

IT SEEMS, THAT AFTER THE OKLAHOMA'S CHIEF MINE INSPECTOR RETIRED, THE LEADERSHIP AT THE OKLA DEPT OF MINES BEGAN TO DETERIORATE UNDER THE DEPUTY CHIEF MINE INSPECTORS.

OSM*AND ODOM'S**FUED, AND WE THINK OSM'S OBJECTIVE TO MOVE AGAINST A STATE PROGRAM TO JUSTIFY THEIR JOB ENDED WITH OSM TAKING CONTROL OF STATE MINING DURING THE EARLY PART OF 1984. THEN PROBLEMS IN THE INDUSTRY REALLY MULTIPLIED.

OSM WAS DRAWN INTO A BATTLE MAINLY BETWEEN TWO LARGE COAL PRODUCERS OVER SOME COAL CONTRACTS. CHEROKEE COAL OF PITTSBURG, KS AND TURNER BROTHERS OF MUSKOGEE, OK.

CHEROKEE COAL COMPANY OF PITTSBURG, KS ASKED OSM TO TAKE CONTROL OF MINING IN THE STATE OF OKLAHOMA DURING THE HEARING IN MUSKOGEE,

* OFFICE OF SURFACE MINING

** OKLA DEPARTMENT OF MINES

OKLAHOMA DECEMBER 21, 1983. CHEROKEE COAL DOES HAVE A SMALL MINE IN THE STATE OF OKLAHOMA BUT THEIR MAIN COAL RESERVES ARE IN KANSAS.

THE MAIN POINT OF THEIR WHOLE SPEECH WAS DIRECTED AT THE TURNER BROTHERS COMPANY OF MUSKOGEE, WHICH IS THE LARGEST IN THE STATE OF OKLAHOMA. ONE WOULD HAVE TO ASK IF THIS WAS INDEED CONCERN ON RULES, REGULATION, AND RECLAMATION. THE TRUE ANSWER IS NO! IT WAS PURELY A MOVE TO STOP COAL MINING IN OKLAHOMA.

THE REASON BEHIND THIS WHOLE MASQUERADE OF FACTS HAD TO DO WITH TWO LARGE COAL CONTRACTS OF HIGH SULFUR COAL.

(1) EMPIRE DISTRICT ELECTRIC OF JOPLIN, MO.

CHEROKEE COAL THOUGHT THEY COULD GET CONTRACT AND SHIP FROM THEIR PITTSBURG, KS MINE; INSTEAD, TURNER BROTHERS GOT THE CONTRACT FOR APPROX. 200,000 TONS PER YEAR TO BE SHIPPED FROM WELCH, OK.

(2) SPRINGFIELD CITY UTILITIES OF SPRINGFIELD, MO.

THIS CONTRACT IS FOR APPROXIMATELY 600,000 TONS PER YEAR AND CHEROKEE COAL HAD CONTRACT TO SHIP FROM KANSAS FOR THE PAST FIVE YEARS.

TURNER BROTHERS WAS AWARDED CONTRACT BY CITY UTILITIES IN NOVEMBER OF 1984 TO START SHIPPING APRIL 1985. THE CONTRACT WILL RUN UNTIL 1990 PROVIDING THEY MEET SHIPPING SCHEDULES. ONE WAY CHEROKEE COULD CAUSE SHIPPING PROBLEMS IS BY MANIPULATING OSM AGAINST TURNER BROTHERS. CHEROKEE COULD CLOSE ITS OKLAHOMA OPERATION AND SHIP FROM KANSAS IF THEY COULD ACQUIRE THE TWO ABOVE CONTRACTS.

SINCE THE HEARING, CHEROKEE HAS BEEN SENDING THEIR PEOPLE, DISGUISED AS CONCERNED CITIZENS, WITH OSM INSPECTORS INTO TURNER BROTHERS OPERATIONS TO POINT OUT ALLEDGED VIOLATIONS.

IT SHOULD BE POINTED OUT THAT BETWEEN ALL THE INSPECTION DEPARTMENTS ASSOCIATED WITH MINING, THERE IS PROBABLY NOT A DAY GOES BY WITHOUT TURNER BROTHERS MINING HAVING AT LEAST ONE INSPECTOR IN SOME MINE. THIS INDUSTRY APPEARS TO BE ONE OF THE MOST OVER INSPECTED

INDUSTRIES THAT WE HAVE EVER SEEN AROUND. IT APPEARS THAT LAWS AND REGULATIONS ARE STILL NEW AND MANY OPEN TO INTERPRETATION AND THAT EACH GROUP IS TRYING TO BUILD THEIR OWN EMPIRE BEFORE ANOTHER GROUP CAN GAIN CONTROL.

WE DO NOT THINK ANY COAL MINER WOULD TELL YOU THEY ARE PERFECT, BUT MOST OF THEM ARE GOOD BUSINESS MEN, AND ORGANIZATIONS THAT ARE LOOKING FOR A FUTURE, NOT SHORT TERM GAINS. ONLY BY GOOD RECLAMATION CAN THEY ACHIEVE ANOTHER COAL LEASE.

IN OKLAHOMA A MINE MIGHT COVER 2 TO 80 ACRES WITH A FEW THOUSAND TONS OF COAL. THE COAL MINING EQUIPMENT IN OKLAHOMA IS MUCH MORE MOBILE AND WHEN YOU FINISH WITH ONE LEASE YOU MUST HAVE ANOTHER PERMIT AND BE ABLE TO MOVE TO A NEW LOCATION OR GO OUT OF BUSINESS. AND EQUIPMENT PAYMENTS GO ON WHEATHER YOU ARE OR ARE NOT MINING.

WHEN A CITATION IS ISSUED AND A MINER DOES NOT AGREE, "LOOK OUT", BECAUSE THE ADMINSTRATIVE PROCESS THEY HAVE TO FOLLOW TAKES SO LONG THAT THERE WILL BE MANY CITATIONS TO FOLLOW, IN ORDER TO TEACH THEM A LESSON. WHEN THE FEDERAL GOVERNMENT PASSED PUBLIC LAW 95-87, SURELY THEY DID NOT MEAN FOR ONE GROUP TO-BE-ENFORCER JUDGE AND EXECUTIONER. THIS ATTITUDE BY OSM TO JUSTIFY THEIR JOBS WITH A MASS OF ARBITRARY CITATIONS IS DETRAMENTAL TO THE TOTAL INDUSTRY. THEY SHOULD BE MADE TO TAKE LESSONS FROM,PERHAPS THE ARMY CORPS OF ENGINEERS WHICH HAVE OVERSIGHT CONTROL ON MANY PROJECTS BUT WOULD NEVER TREAT PRIVATE BUSINESS IN A MANNER WHICH THE OFFICE OF SURFACE MINING HAS TAKEN WITH THEIR ATTITUDE.

COAL MARKETING

OKLAHOMA HAS SEVEN COAL CONSUMING INDUSTRIAL PLANTS THAT USE APPROXIMATELY 750,000 TONS OF OKLAHOMA COAL PRODUCTION A YEAR. THIS REPRESENTS ABOUT 20% OF THE COAL THAT IS PRODUCED YEARLY IN OKLAHOMA. THE REMAINING PRODUCTION IS SENT OUT OF OKLAHOMA BY RAIL, TRUCK OR BARGE TO SURROUNDING STATES OR LOADED ON BARGE FOR EXPORT TO FOREIGN COUNTRIES.

BEGINNING IN 1978 OKLAHOMA COAL PRODUCTION BEGAN TO FIND ITS WAY TO FOREIGN MARKETS IN SPAIN, GREECE AND JAPAN IN RECORD SETTING AMOUNTS. PORT FACILITIES ON THE ARKANSAS RIVER SERVED AS SHIPPING POINTS TO IMPORTANT FOREIGN MARKETS. DURING THE LAST FIVE YEARS OVER A 1/2 BILLION DOLLARS WORTH OF OKLAHOMA COAL HAS LEFT OUR STATE FOR FOREIGN SHORES OR OTHER STATES. OKLAHOMA HAD BEGUN TO DEVELOP A REPUTATION AS A RELIABLE SOURCE OF HIGH QUALITY EXPORT COAL.

THE OKLAHOMA COAL INDUSTRY AND THE REPUTATION IT HAS DEVELOPED WITH FOREIGN AND DOMESTIC CUSTOMERS IS BEGINNING TO SUFFER DUE TO INCREASED GOVERNMENTAL INTERFERENCE ON THE PART OF THE OKLAHOMA STATE DEPARTMENT OF MINES AND THE FEDERAL OFFICE OF SURFACE MINING. RECENT NEWS STORIES AND ARTICLES IN NATIONAL PUBLICATIONS POINT TO THE FACT THAT THE OKLAHOMA MINING INDUSTRY HAS EXPERIENCED GREAT DISRUPTION DUE TO THE UNEVEN ENFORCEMENT OF RULES AND REGULATIONS.

THERE IS PLENTY OF BLAME TO GO AROUND FOR WHAT IS WRONG. BUT THE MOST IMPORTANT FACT THAT IS BEING FORGOTTEN DURING THE RECENT SERIES OF ACCUSATIONS, LAWSUIT AND COURT ACTIONS, IS THAT THE MINE INDUSTRY AND THE STATE ARE BOTH GOING TO PAY A TERRIBLE ECONOMIC PENALTY IF THE SITUATION IS NOT CORRECTED.

FROM A STRICT MARKETING STANDPOINT, COAL CONSUMERS WILL SHY AWAY FROM THE STATES AND REGIONS OF THE COUNTRY THAT ARE UNRELIABLE OR TROUBLESOME. NO CUSTOMER, FOREIGN OR DOMESTIC, WILL RISK DOING BUSINESS WITH AN OKLAHOMA PRODUCER IF THEY CAN'T BE COUNTED ON TO SUPPLY COAL WITHOUT INTERRUPTION. OKLAHOMA IS DOING ITSELF A GREAT DISSERVICE BY ALLOWING THE OKLAHOMA STATE DEPARTMENT OF MINES AND THE OFFICE OF SURFACE MINING TO UNDO WHAT HAS TAKEN NEARLY A DECADE TO DEVELOP, A MINING INDUSTRY WITH OVERSEAS MARKETS. IF THE SITUATION IS ALLOWED TO CONTINUE, OKLAHOMA WILL BE RELEGATED BACK TO THE STATUS OF A SPOT MARKET SUPPLIER THAT CANNOT BE COUNTED ON FOR ANY LONG TERM CONSIDERATION.

IN ORDER TO EXPORT OKLAHOMA COAL, COMMITMENTS OF TIME AND ENERGY ARE MADE WITH TRUCK LINES, BARGE AND RAIL LOADING FACILITIES. MILLIONS OF DOLLARS ARE EXPENDED IN TRANSPORTING OKLAHOMA COAL PRODUCTION DOWN THE ARKANSAS RIVER TO THE PORT OF NEW ORLEANS OR BY RAIL TO POINTS IN OTHER STATES FLOWING DOLLARS BACK INTO THE OKLAHOMA ECONOMY. OVER 3,000 JOBS IN THE MINING AND TRANSPORTATION INDUSTRIES DEPEND ON COAL PRODUCTION BEING AVAILABLE FOR SALE.

IN 1964 APPROXIMATELY 90 MILLION DOLLARS OF OKLAHOMA COAL WAS SOLD TO NEIGHBORING STATES AND FOREIGN COUNTRIES. THAT MONEY WAS RETURNED TO OKLAHOMA AND WAS REINVESTED BY CONSUMERS AT EVERY LEVEL OF THE ECONOMY. IF THE COAL INDUSTRY IS PUT OUT OF BUSINESS, AN ECONOMICALLY DEPRESSED GEOGRAPHIC AREA WILL GROW EVEN WORSE.

COAL AND TRUCKING INDUSTRY

THE COAL INDUSTRY MINED 3,674,567 TONS OF COAL IN 1963. THAT FIGURE IS DOWN SOME IN 1964 BUT STILL IS IN THE 3,000,000 TON RANGE. WHILE SOME WAS LOADED DIRECT TO RAIL WITHOUT TRUCKING, THE VAST PORTION WAS TRUCKED IN SOME MANNER EITHER TO CUSTOMER DIRECT, RAIL LOADING FACILITIES, OR PORT FACILITIES. IT IS HARD TO COME UP WITH EXACT FIGURES, BUT IT IS FELT IT WOULD EXCEED \$15,000,000 IN REVENUE TO THE TRUCKING INDUSTRY.

SINCE OKLAHOMA'S COAL RESERVES ARE LOCATED IN THE EXTREME EASTERN PART OF THE STATE, WHICH IS ONE OF THE STATE'S MORE ECONOMIC DEPRESSED AREAS DUE TO LACK OF MANUFACTURING AND OTHER INDUSTRY AND MOST OF THE TRUCKING COMPANY EMPLOYEES ALSO COME FROM THESE AREAS, IT IS VERY IMPORTANT TO THE LOCAL ECONOMIC HEALTH OF THE AREA.

OKLAHOMA'S COAL IS SHIPPED BY TRUCK TO TEXAS, ARKANSAS, MISSOURI, KANSAS. LISTED BELOW ARE JUST SOME OF THE LOCATIONS:

CHANUTE, KANSAS; HUMBOLT, KANSAS; INDEPENDENCE, KANSAS;
FREDONIA, KANSAS; KANSAS CITY, KANSAS; INDEPENDENCE, MO; COFFEYVILLE,
KS; SPRINGFIELD MO; RIVERTON, KS; BRANSON, MO; PARSONS, KS; ASBURY,
MO; LONGVIEW, TX; DALLAS TX; LONE STAR, TX; FT. WORTH, TX; STREETMAN,
TX; CLEBURNE, TX; MIDLOTHIAN, TX; WACO, TX; ASHDOWN, AR; FORMAN, AR;
SARATOGA, AR; AND NASHVILLE, AR.

MOST OF THE ABOVE LOCATIONS ARE CEMENT PLANTS, PAPER MILLS, LIME PLANTS, CHEMICAL PLANTS, MANUFACTURING PLANTS AND REQUIRE MANY TONS OF COAL ON A DAILY BASIS.

THE COAL MINING INDUSTRY HAS CREATED A VERY LARGE TRUCKING INDUSTRY WITH ALMOST AS MANY EMPLOYEES AS THE COAL MINING INDUSTRY AND IS VERY IMPORTANT TO EASTERN OKLAHOMA.

COAL MINES IN OKLAHOMA ARE SMALL TRACKS OF LAND SO MOST OF THE COAL SHIPPED BY RAIL HAS TO BE TRUCKED TO RAIL SIDINGS. ALSO, 1,186,512 TONS OF COAL WAS SHIPPED BY BARGES IN 1984 ON NAVIGATION SYSTEM, ALL OF WHICH HAD TO BE TRUCKED TO LOADING DOCKS.

IT IS ESTIMATED THAT THE STATE OF OKLAHOMA RECEIVES AT LEAST \$ 300,000 ANNUALLY IN FUEL TAXES ON COAL SHIPMENTS.

TRUCK TAGS ALSO CREATE ANOTHER \$400,000 PLUS PER YEAR FOR THE STATE. THEN OF COURSE YOU MUST ADD PAYROLL TAXES, ETC..., SO TRUCKING HAS A VESTED INTEREST, BUT SO DOES THE STATE OF OKLAHOMA.

COAL AND McCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM

COAL PRODUCTION IN OKLAHOMA HAS A TREMENDOUS EFFECT ON THE OUTBOUND CARGO IN THAT COAL ON THE OKLAHOMA SEGMENT CONSTITUTED 36.8% OF ALL OUTBOUND CARGO IN THE YEAR 1984. THE FIGURES USED IN THIS ANALYSIS WERE OBTAINED FROM THE ATTACHED CORPS OF ENGINEERS RECORDS OF THE TOTAL 3,227,102 OUTBOUND TONNAGE; 1,186,512 TONS WERE COAL.

THE SURPRISE TO MOST PEOPLE WOULD BE, THAT IN 1984, THERE WAS ONLY 702,933 TONS OF WHEAT SHIPPED AND 831,939 TONS OF PETROLEUM PRODUCTS (INCLUDES INBOUND AND OUTBOUND ON PETRO PRODUCTS) WHICH MEANS WE SHIPPED 483,579 TONS MORE COAL THAN WHEAT.

THE LARGEST SINGLE ITEM SHIPPED OUTBOUND ON OKLAHOMA SEGMENT OF NAVIGATION SYSTEM IN 1984 WAS COAL WITH 1,186,512 TONS.

WHAT DOES THAT MEAN TO THE PORT OF CATOOSA, PORT 33, ROGERS PORT, MUSKOGEE, KEOTA, AND SALLISAW? A LOSS OF OVER \$1,000,000 IN REVENUE; AND TO PORTS LIKE KEOTA AND SALLISAW IT WOULD MEAN A LOSS OF OVER 90% OF THEIR BUSINESS.

TO THE TRUCKING INDUSTRY, IT WOULD MEAN A LOSS OF APPROXIMATELY 3,000,000 ON TRUCKING COAL TO PORT FACILITIES.

TO THE BARGE INDUSTRY, THE LOSS OF COAL SHIPMENTS WOULD COST THEM OVER \$6,000,000. INBOUND SHIPMENTS COULD BE GREATLY HURT BECAUSE MANY BARGE COMPANIES BRING OTHER PRODUCTS IN AND USE COAL AS BACKHAUL TO REDUCE TOTAL COST.

THE TAX TO THE STATE OF OKLAHOMA ON FUEL ALONE FOR MOVEMENT WOULD BE APPROXIMATELY \$40,000. THIS DOES NOT INCLUDE LOSSES OF INCOME TAXES (PERSONAL AND CORPORATE).

IT IS INTERESTING TO NOTE THAT SINCE THE NAVIGATION SYSTEM HAS BEEN IN SERVICE, (1972-1984), THAT 8,556,777 TONS OF COAL HAS BEEN EXPORTED COMPARED TO WHEAT AT APPROX 4,706,830 TONS; THUS, WE HAVE EXPORTED ALMOST TWICE AS MUCH COAL AS WHEAT. ALSO, THAT OVER 31% OF ALL OUTBOUND CARGO ON NAVIGATION SYSTEM SINCE IT WAS BUILT HAS BEEN COAL.

COAL SHIPMENT DURING FIRST FIVE MONTHS OF 1985 ARE OFF BY 37.3% AND MOST OF 1985 TONNAGE WAS FROM NOW DEPLETED STOCKPILES. THE INBOUND FREIGHT IS OFF THE FIRST FIVE MONTHS OF 1985 BY APPROX. 20%.

COAL MADE NAVIGATION SYSTEM WORK. IN THE FIRST YEARS OF SYSTEM LIKE 1972, 461,839 TONS OF COAL WAS SHIPPED WHICH WAS OVER 80% OF THE TOTAL 521,438 TONS OF OUTBOUND FREIGHT.

EVERY PERSON CONNECTED WITH THE WATERWAY IS VERY CONCERNED THAT IF COAL SHIPMENTS CONTINUE TO DECREASE AT THESE LEVELS IT WILL HAVE SERIOUS IMPACT ON TOTAL MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM.

OTHER DATA & NOTES

1. ALL COAL WITH THE EXCEPTION OF A FEW BARGES IS OUTBOUND TONNAGE.
2. TURNER BROTHERS INC. OF MUSKOGEE SHIPPED 362 BARGES OF COAL IN 1984. TOTAL TONS OF 545,548 WHICH WAS APPROX. 17% OF TOTAL OUTBOUND TONNAGE ON OKLA SEGMENT.
3. COAL WAS THE LARGEST SINGLE ITEM SHIPPED OUTBOUND IN 1984 WITH 1,186 512 TONS OR 36.8% OF TOTAL OUTBOUND TONNAGE OF 3,227,102 TONS.
4. STOCKPILE SHIPMENTS OF COAL IN THE FIRST FIVE MONTHS OF 1985 WAS 309,885 TONS OR 37.9% OF TOTAL OUTBOUND TONNAGE OF 818,239 TONS.
5. MAY, 1985 WAS THE FIRST MONTH IN WHICH INBOUND EXCEEDED OUTBOUND SINCE JULY, 1975.
6. REF ATTACHED CORPS OF ENGINEERS DATA SHEETS.
7. IT REQUIRED OVER 47,000 SEMI-TRUCK LOADS OF COAL TO LOAD BARGES IN 1984.

TULSA DISTRICT, CORPS OF ENGINEERS

COMMERCE ON THE OKLAHOMA SEGMENT
MCLELLAN-FERR ARKANSAS RIVER NAVIGATION SYSTEM

ANNUAL SUMMARY 1972 - 1984

THE FOLLOWING IS A STATEMENT OF TONNAGES TRANSPORTED ON THE OKLAHOMA SEGMENT OF THE MCLELLAN-FERR ARKANSAS RIVER NAVIGATION SYSTEM. THE FIGURES FURNISHED HEREON ARE ESTIMATES ONLY, AND ARE SUBJECT TO CHANGE. A STATEMENT OF TONNAGES TRANSPORTED ON THE ENTIRE NAVIGATION SYSTEM IS PUBLISHED MONTHLY BY THE LITTLE ROCK DISTRICT, CORPS OF ENGINEERS AND IS AVAILABLE UPON REQUEST.

TONNAGE					
YEAR	INBOUND	OUTBOUND	INTERNAL	TOTAL	% CHANGE
1972	310616	521438	283907	1115961	---
1973	199264	282839	369772	851875	-24
1974	218405	416075	268130	902610	6
1975	233624	520518	126952	881094	-2
1976	291627	1255553	225591	1772771	101
1977	365144	2015766	369247	2749157	55
1978	401970	2758354	235800	3396124	24
1979	511537	2839541	275597	3626675	7
1980	522971	3772709	176079	4471759	23
1981	692811	3979421	207803	4880035	9
1982	751390	3179234	198800	4129424	-15
1983	973745	2696011	244450	3914156	-5
1984	1256223	3227102	231400	4714725	20
TOTALS	6729227	27464561	2929561	36290295	

1. INBOUND--TRAFFIC TERMINATING AT POINTS ON THE MCLELLAN-FERR ARKANSAS RIVER NAVIGATION SYSTEM THAT ORIGINATES AT POINTS OFF THE WATERWAY.
2. OUTBOUND--TRAFFIC ORIGINATING AT POINTS ON THE MCLELLAN-FERR ARKANSAS RIVER NAVIGATION SYSTEM AND DESTINATED FOR POINTS OFF THE WATERWAY.
3. INTERNAL--TRAFFIC ORIGINATING AND TERMINATING AT POINTS ON THE MCLELLAN-FERR ARKANSAS RIVER NAVIGATION SYSTEM.
4. % CHANGE--DIFFERENCE BETWEEN LISTED YEAR AND PRECEDING YEAR VALUES.

TONNAGE BY COMMODITY										
YEAR	IRON & STEEL	CHEM FERT	OTHER CHEM	PETRO PROD	SAND & GRAVEL	COAL	ROCK	FARM PROD	WHEAT SOYBEANS	MISC
1972	192500	92577	19635	16490	111400	461839	162916	---	9366	50928
1973	147853	48389	13359	4119	206900	181075	142231	666188	---	40411
1974	157557	45750	20751	12832	120420	174700	119384	9199900	---	52316
1975	123973	81850	31316	19106	123534	167898	---	---	235775	51564
1976	123066	63252	69026	668970	124525	191484	116773	---	241109	66562
1977	189969	135191	71103	932468	169000	438315	203057	283065	160464	73677
1978	216826	260666	91040	785741	240600	1109588	4500	292370	198260	101250
1979	240496	465320	102250	905883	281250	792107	37062	284521	330174	80550
1980	324789	534382	107364	1654713	145955	699005	32324	9852370	---	120677
1981	441567	321213	134623	1478500	178600	1282552	36585	208097	667051	79284
1982	398079	343037	94111	1248852	202987	961184	10526	228842	515664	62991
1983	529084	468740	148912	847523	244460	910518	---	137145	689642	55110
1984	519028	802213	192369	831939	233060	1186512	6100	128417	702933	74102
TOTALS	3404787	3667588	1086859	9405018	2382931	8556777	871558	1362757	3734272	699400

* INCLUDES WHEAT AND SOYBEAN TONNAGES

DEPARTMENT OF THE ARMY
TULSA DISTRICT, CORPS OF ENGINEERS

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COMMERCE ON THE OKLAHOMA SEGMENT
MCCELLELLAN-KEPP APACHEAS RIVER NAVIGATION SYSTEM

MAY 1985

THE FOLLOWING IS A STATEMENT OF TONNAGES TRANSPORTED ON THE OKLAHOMA SEGMENT OF THE MCCELLELLAN-KEPP APACHEAS RIVER NAVIGATION SYSTEM. THE FIGURES FURNISHED HEREON ARE PRELIMINARY ESTIMATES ONLY, AND ARE SUBJECT TO CHANGE. A STATEMENT OF TONNAGES TRANSPORTED ON THE ENTIRE NAVIGATION SYSTEM IS PUBLISHED MONTHLY BY THE LITTLE ROCK DISTRICT, CORPS OF ENGINEERS AND IS AVAILABLE UPON REQUEST.

TONNAGE				
MONTH	INBOUND	OUTBOUND	INTERNAL	TOTAL
JAN	59485	261712	3500	324697
FEB	59051	174978	0	234029
MAR	81158	126529	0	207687
APR	120769	180169	2000	302938
MAY	96710	74951	17000	192661
JUN				0
JUL				0
AUG				0
SEP				0
OCT				0
NOV				0
DEC				0
TOTALS	419773	819239	23400	1261412
% CHANGE	-14	-21	-57	-27

1. INBOUND--TRAFFIC TERMINATING AT POINTS ON THE MCCELLELLAN-KEPP APACHEAS RIVER NAVIGATION SYSTEM THAT ORIGINATED AT POINTS OFF THE WATERWAY.
2. OUTBOUND--TRAFFIC ORIGINATING AT POINTS ON THE MCCELLELLAN-KEPP APACHEAS RIVER NAVIGATION SYSTEM DESTINED FOR POINTS OFF THE WATERWAY.
3. INTERNAL--TRAFFIC ORIGINATING AND TERMINATING AT POINTS ON THE MCCELLELLAN-KEPP APACHEAS RIVER NAVIGATION SYSTEM.

TONNAGE BY COMMODITY											
MONTH	IRON & STEEL	CHEM FERT	OTHER CHEM	PETRO PROD	SAND & GRAVEL	COAL	ROCK	FARM PROD	WHEAT	SOYBEANS	MISC
JAN	29785	43138	9100	71676	5200	117066	2700	22450	15425	5657	2870
FEB	19641	15881	15340	78672	0	50992	0	12278	21420	5600	16705
MAR	21442	52000	20436	53100	0	28872	0	4500	34957	2800	3680
APR	43317	36807	21550	61300	2000	91192	0	23492	15500	1400	5980
MAY	44776	38586	7400	52436	17600	21763	0	2900	2800	0	1400
JUN											
JUL											
AUG											
SEP											
OCT											
NOV											
DEC											
TOTALS	158961	186412	73826	317184	24800	309885	2700	65520	90402	15457	32165
% CHANGE	-21	-39	-30	-8	-54	-14	0	30	-67	-27	133

(% CHANGE)--DIFFERENCE BETWEEN 1984 TOTALS FOR THE SAME PERIOD. VALUES REPRESENT INCREASE UNLESS PRECEDED BY "-" SYMBOL.

Senator NICKLES. Thank you, Mr. Johnson. I think you've made a very good point. Our next panelist is Dr. Douglas Klusmeyr, president of Associated Producers Co., at Oklahoma City.

**STATEMENT OF DR. DOUGLAS B. KLUSMEYR, PRESIDENT,
ASSOCIATED PRODUCERS CO.**

Dr. KLUSMEYR. Like the other panelists, we want to thank you, not just for the opportunity to speak and present testimony, but more than anything else we want to thank you for having the interest to be able to come and investigate the causes of our Oklahoma tragedy. I have a written copy of what I'm going to say but I want to summarize it, and then I will not read it verbatim. I have three things to offer to the committee. The first is that the Federal regulation of business is almost always a tragedy, and I will give some illustrations. Second, is that the record of the Federal Office of Surface Mining in Oklahoma would be ludicrous if it were not so tragic in its consequences, and then third, so that I can end on a hopeful note, I can tell you how to solve all of the above problems really very simply.

To support my first statement that Federal Government regulation of business is almost always a tragedy, is all you have to do is look at the Socialist planned states of China and Russia, and watch, as they have more and more free enterprise, and see as the United States gradually falls behind by regulating more and more businesses.

I'll just give a couple of instances when the time of the Federal regulation policing policies were in effect. It used to cost me \$300 to fly round trip from Oklahoma City to Kansas City. The Federal Government got out of it, and I now can fly from Oklahoma City to Kansas City for approximately \$100. I can cite improvement that has made by removing Federal regulators from the trucking industry, from the railroad industry, and from a half a dozen industries. Federal regulation of business is almost always tragic.

In terms of mining, Federal regulations of business has been doubly tragic. The first thing it's done has raised the cost of mining coal by \$7 and more, a ton. When you raise the cost of mining coal like this, you are adding to inflation because the increase of a primary basic industry product raises the price of everything from bobby pins to bulldozers.

The increase in coal prices caused by Federal regulations and Federal policing has not only made us less competitive in world markets, but it has now made it possible for people to mine coal across the ocean, bring it by ship to the United States, and deliver it, for less money than we can mine it. These are artificial costs that have been tacked on by the minutia developed by the Office of Surface Mining.

With the exception of the Western mines that have seams that are 75 feet thick, the Office of Surface Mining, the demand for bonds is going to drive out of business virtually every surface miner in the country. It cost millions of dollars to get bonds. This ties up capital, and these bonds are kept for a minimum of 5 years, and in some cases, as you've heard for 25 years, and the capricious nature of the Office of Surface Mining working on State agencies

make it almost impossible to get some of these bonds released. The low profit that in mining coal is driving almost everyone out of the coal business.

The tragic result of the Office of Surface Mining, under Federal regulations and policing is the fact that it hasn't improved reclamation one whit. I can take you to reclamation sites done before this public law was passed, and show you reclamation that is good, that was as good as anything that you can see, long before the Federal nitpickers and police came in on us.

Further the Office of Surface Mining is a complete duplication of services. We have the State agency, and we have a Federal agency. We pay taxes to support both of them, and they overlap, and they are both doing the same thing. We're required to pay taxes to both governments to accomplish one function.

As the bureaucratic wheels continue to grind, the paperwork increases and the technicalities become more minute and obtuse, and the total mess gets worse. As President Reagan said, let's get the Government out of private business.

The record of the Office of Surface Mining in Oklahoma if it were a Gilbert and Sullivan comedy, would be ludicrous, and if it were not so tragic in its consequences to people like Mr. Turner and Mr. McNabb and others who have made this their whole life. The Federal takeover power grab by the Federal regulation took place over a year ago. In this year, the problems have not been solved, and the removal of Federal regulator policemen is not in sight. The reason for this is because OSM is the source of the problems. They are our judges, our jury, our prosecutors, and our policemen, all rolled into one. The deck is stacked against us in such a way that we cannot win. Since OSM sets the standards, and then changes the standards without any check, and at any whim they have, we cannot solve the problems, because OSM cannot possibly be satisfied.

Now, you heard about the number of Oklahoma people on the staff of the Oklahoma Department of Mines. We ought to note and make it very clear that we have far more Federal regulators than policemen in Oklahoma, policing our industry than we have either mines or miners. We have them in Tulsa, we have them in Muskogee, and we have them in Oklahoma City, running the Oklahoma Department of Mines. All of this under the guise of helping us. It would no doubt be cheaper and more efficient if we just had one Federal regulator policeman assigned to run each mine. This would at least reduce the expense to the Federal Government of having to pay for the helicopter rides.

The cost to the taxpayers for all this regulation, inspection and policing is more than \$5 per ton, for each ton of coal mined.

Now, if you want to reduce some of the Federal budget, here is where a lot of it is going, where we have two and three Federal policemen in for each operating mine. Now, this whole thing would be ludicrous to pay more than \$5 per ton per each ton of coal mined, if it were not for the fact that it is destroying the mining industry, it is destroying jobs, not only for miners, but also for all of the support industries, which are needed in Oklahoma.

Now, all of the problems above can be solved very simply. I don't mean by just forgetting the law. I will assume that the environ-

mentalists who petition Congress have very high noble ideas. I will assume that the Congressmen who air these petitions and pass these laws also have noble efforts in mind to protect the environment. We can do this, we can do this very simply, and very cheaply, because all we have to do is dissolve the Office of Surface Mining, and hire a private business to fulfill all of the functions required under public law and we can do it for less than 10 percent of the cost of the Office of Surface Mining.

In fact, I even have a plan worked out, and I will be happy to offer myself for the job, and I'll run the company for 10 percent, for 10 percent of what OSM does, and I'll do a better job, and I'll give you better results, and we will have no more unreclaimed land and the coal industry can be healthy again, and I'll end up with a bloody fortune with this kind of money. It could be done by private business. It cannot be done by Federal bureaucracy when bureaucrats are interested solely in extending their own power, and keeping their own job, and their own way of life. Thank you sir.

[The prepared statement of Dr. Klusmeyr follows:]

Testimony by Dr. Douglas B. Klusmeyer SME/AIME, President, Associated Producers Company, 5009 North Pennsylvania, Oklahoma City, Oklahoma 73112; before the U. S. Senate Subcommittee on Natural Resources Development and Production of the Committee on Energy and Natural Resources; June 14, 1985, at the Muskogee Civic Center, 425 Boston Street, Muskogee, Oklahoma.

1. FEDERAL GOVERNMENT REGULATION OF BUSINESS IS ALMOST ALWAYS A TRAGIC MISTAKE

To support this statement look at the planned, centralized economies of Russia and China. State planning - state socialism just doesn't work. By any comparison, by any standard, our capitalist - business economy is vastly superior to the central planning of the socialist countries.

In recent years, however, many in this country have lost the vision of both freedom and free enterprise and have turned to the Federal Government asking for FEDERAL REGULATION - FEDERAL POLICING of the business community. While the arguments behind these requests have seemed both logical and humanitarian, the results have been tragic.

I will cite but two examples of the above. FEDERAL REGULATION - FEDERAL POLICING of the airlines produced a non-competitive, wasteful system. A few years ago, under FEDERAL REGULATION - FEDERAL POLICING it cost me almost \$300.00 to fly round-trip to Kansas City. This same trip now costs me about \$100.00. The removal of FEDERAL REGULATION - FEDERAL POLICING of the trucking industry has produced similar benefits to the consumer.

FEDERAL REGULATION - FEDERAL POLICING of the coal industry has produced even worse results.

- A. FEDERAL REGULATION - FEDERAL POLICING has raised the price of coal by a minimum of seven (\$7.00) dollars per short ton. The coal industry is a primary industry. By raising the price of coal FEDERAL REGULATION - FEDERAL POLICING has raised the price of everything from bobby pins to bulldozers.
- B. The increase in coal prices caused by FEDERAL REGULATION - FEDERAL POLICING has not only made us less competitive in world markets but it has made it possible for other countries to produce coal - ship it to the United States - and deliver it for less than we can produce it. This has had a serious impact on our balance of payments and it has further damaged our economy by reducing the number of jobs both in the coal industry and in its related supply industries.
- C. With the exception of the Western mines with their very thick seams of coal, almost every other mining company in the country - with strip mines is in bad economic shape. The inability to get reclamation bonds, the necessity of tying up capital resources for these bonds, the capricious nature in which these bonds are released, the low profit margin in mining coal make it almost impossible and certainly undesirable to be engaged in the mining business today. When more mines are forced to close, the cost of coal will escalate which will bring further unnecessary pressure on every area of the economy.
- D. For all of the damage listed above, the positive results of FEDERAL REGULATION - FEDERAL POLICING have been non-existent. Reclamation is no better now than before this Federal nightmare began.

- E. Further, the Federal Office of Surface mining is a complete duplication of services. We are required to pay taxes to support REGULATION - POLICING by both the Federal and State governments.
- F. Finally, as the bureaucratic wheels continue to grind, the paper work increases, the technicalities become more minute and obtuse and the total mess gets worse. As President Reagan said, "Let's get the Government out of private business."

II. THE RECORD OF THE FEDERAL OFFICE OF SURFACE MINING IN OKLAHOMA WOULD BE LUDICROUS IF IT WERE NOT SO TRAGIC IN ITS CONSEQUENCES.

- A. The Federal **TAKEOVER-POWERGRAB** of the Oklahoma mining program by the Federal Office of Surface Mining took place over a year ago. In this year the problems have not been solved and the removal of the FEDERAL REGULATORS - POLICE is nowhere in sight. The reason for this is because OSM is the source of the problems. They are our judges, jury, prosecutors and policeman all rolled into one. With a deck stacked against us like this there is no way we can win. Since OSM sets the standards and changes the standards without any check we cannot solve problems because OSM cannot possibly be satisfied.
- B. We have more FEDERAL REGULATORS - POLICEMEN in Oklahoma POLICING our industry than we have either mines or miners. We have them in Tulsa, Muskogee and in Oklahoma City running the Oklahoma Department of Mines - all under the guise of helping us. It would, no doubt, be both cheaper and more efficient if we had one FEDERAL REGULATOR - INSPECTOR - POLICEMAN assigned to run each mine. This would at least reduce the expense to the Federal Government and help to reduce the deficit.
- C. The cost to the taxpayers for all of the REGULATION - INSPECTION - POLICING is in excess of \$5.00 per ton for each ton of coal mined.

As stated above the whole thing would be ludicrous - to pay more than \$5.00 per ton of coal mined to have an army of REGULATOR - INSPECTOR - POLICEMEN swarming over the few mines we have in Oklahoma accomplishing nothing of value in terms of reclamation - if it were not for the staggering damage all of this is causing to the economy of Oklahoma as well as to the country.

III. ALL OF THE ABOVE PROBLEMS CAN BE SOLVED VERY SIMPLY

The environmentalists that petitioned Congress and the Congressmen who responded to this petitioning had as their goal the protection of the land from the detrimental effects of strip mining.

These same environmentalists and lawmakers still want to see that goal achieved and the intent of the law fulfilled.

All of us would like to protect American freedom and allow responsible business to operate.

No one wants unnecessary deficits or inflation.

All of the above can be accomplished by:

- A. Abolish the Federal Office of Surface Mining.
- B. Hire a private contractor to see that all of the provisions of Public Law 95-87 are enforced.
- C. The cost for a private contractor to see that the provisions of Public Law 95-87 are fulfilled would be 10% or LESS than the cost of operating the Office of Surface Mining and its related agencies.

Should you be at all interested in considering this suggestion, I will give full details on how this can be done and guarantee a relatively problem-free adherence to the standards set for in Public Law 95-87.

Senator NICKLES. Doctor Klusmeyr, we appreciate your comments. Associated Producers Co., is your base out of Oklahoma City?

Dr. KLUSMEYR. We're based in Oklahoma City, yes, sir.

Senator NICKLES. Do you have your mines, or are you actively mining in Oklahoma?

Dr. KLUSMEYR. No; this is one of the reasons why I'm able to take on the Office of Surface Mining and speak honestly. I don't mine. If I did mine, I wouldn't have the courage to be able to speak up this way, about our Federal regulator policemen.

Senator NICKLES. Mr. Turner, you've been through a lot. Do you think—well, as a matter of fact, from your statement, I think you mentioned the possibility of retaliation or something. Do you have any fear of retaliation, you or your company, based on your statements today?

Mr. TURNER. Senator, most people that know me know there is no need to threaten me, and I'm going to say what I think.

Senator NICKLES. I appreciate that. Do you think there might be some type though of either additional fines, or denial of permits?

Mr. TURNER. Well, I have already went through a period of 6 or 7 months of that type thing, so you know, when a man tells you he's going to hold your permit because you had a piece of property that you owned yourself, and had 599 acres in it, and I mined 140 acres of that, and I left that permit with my own equipment on our property to drain clear, clean up, that I didn't have the right to do that, then I would say it was retaliation or some type of harassment.

Senator NICKLES. He said you didn't have the right to do that on your property?

Mr. TURNER. Not without permission by the Office of Surface Mining, and the Oklahoma Department of Mines.

Senator NICKLES. That's correct. Property owners in the State of Oklahoma have no rights. We've gotten fines and violations on a piece of property that was mined in 1981. The man received a soil conservation award on it 2 years ago, because of productivity and the grass that was growing on it. I was told to go tell that farmer to take his own cows off of that pasture, because he didn't have a right to use it. I was fined for it, I was fined \$1,400.

Senator NICKLES. You were fined for it, and they were telling you that it couldn't what, be released?

Mr. TURNER. They told me that I had to keep that man off or submit a grazing plan and tell him when he could graze his own pasture off his own land on property that was back it was where previously before it was touched, as far as the mine was concerned. The property has not been released. Turner Bros. has up over \$8 million of reclamation bonds in the State of Oklahoma, and I think I've got one bond release of \$47,000 by going directly to Ms. Townley a week, about a week ago, on a piece of property that should have been released at least a year ago. There is no such thing as a bond release in the State of Oklahoma.

Senator NICKLES. So, is it OSM that won't release the bond, or is it the Oklahoma Department of Mines?

Mr. TURNER. Senator, you said that you were a manufacturer, and I would say that you don't have two bosses at your plant. Some

place along the line somebody's got to be boss, and somebody has got to make the decisions. You can't go to one agency, and have them say the other agency is not doing their job. Then, you go to the other agency and they say they're not doing their job. It doesn't work, and that's what the State of Oklahoma has been faced with. Ever since OSM got here.

Senator NICKLES. Would you say that, and I realize that this is a painful time for you, and Turner Bros. has been in business how long?

Mr. TURNER. We came in 1978 into Oklahoma.

Senator NICKLES. 1978?

Mr. TURNER. Yes, sir.

Senator NICKLES. You had been in mining before that for how long?

Mr. TURNER. We were not in mining, prior to that.

Senator NICKLES. In 1978, and by 1984, were you the biggest producer in the State of Oklahoma?

Mr. TURNER. That's what they tell me.

Senator NICKLES. That's that they've told me too. I was interested in hearing that, and I think by Mr. Johnson's comment, that would be the case as far as a producer. You mentioned a number of employees, 320?

Mr. TURNER. Yes, sir.

Senator NICKLES. And, I know that this deal that was worked out with yourself and Mr. Jackson and Transwestern, the ink may not even be dry on it. I'm not sure if it is, but is it understood that you, or is it your expectations that you will continue operating and those 320 employees will still be active, and still be moving coal down the Port of Catoosa?

Mr. TURNER. They would not have an agreement if that wasn't true.

Senator NICKLES. All right, I appreciate that. Do you think that OSM's takeover of inspection and enforcement last year is largely responsible or the major factor leading to the bankruptcy of Turner Bros.?

Mr. TURNER. Well, there was a lot of contributing things, but, yeah. Anytime that a coal miner is delayed, he's hurting. We've talked about permitting and bonding, and things like that here and heard testimony. I was in a coal mine in Wyoming, and they mined 8 million tons of coal last year which was twice as much which was mined in the State of Oklahoma. They covered 70 acres. Turner Bros. covered 700 acres to mine 1.2 million. Now, permitting on things like that under those conditions are essential. Any delays or anything that creates a deterrent to those things developing and that's what happened when OSM came in, creates a problem for miners.

The Turners Bros. are big boys, and I'm not sitting here looking for sympathy, or complaining about being picked upon, or anything else. Everybody in the State of Oklahoma has been abused.

Senator NICKLES. Well, we've heard some of the smaller miners mentioned the delays as far as getting bond releases. You mentioned you had what, 8 million dollars' worth of bonds that are pending, right now?

Mr. TURNER. That is correct. And, we were demanded that we post 1.3 million dollars' worth of bonds in Rogers County which we should have had in December and we still don't have it. That particular site, Senator, is located in the perimeters of—well, Turner Bros. in their permit agreed to reclaim 13,699 lineal feet of 50 feet exposed high wall, and 130 acres of orphan lands if the Federal Government left that under contract, they would have had to pay me to go in and mine it, rather than me putting up 1.3 million dollars' worth of bonds. It amounted to over \$9,300 an acre for the actual acres that were going to be mined, and over \$4 per ton for the bond on that particular property.

Senator NICKLES. Dr. Klusmeyr mentioned the fact that the regulation cost of mining coal in this country is somewhere in the neighborhood of \$5 a ton. Would you agree it was that high?

Mr. TURNER. I wouldn't have that knowledge. He would be a good deal more knowledgeable than I would. The cost of regulation is not astronomical and most of us that are mining today as has been mentioned, they would reclaim if they didn't have a bond. Turner Bros. couldn't put together 32 million tons of reserve without cash money, in the the last 4 years, if they didn't reclaim it, because the property owners would not allow it.

Senator NICKLES. So, you think they would reclaim it regardless?

Mr. TURNER. There is no question. You would not get leases. The reclamation problems that people look at today, and that you see pictures of, are the old mines that basically were owned by those miners years and years ago, and they were their own properties.

Senator NICKLES. I looked at these fines that I received from OSM and Turner Bros. has a lot of them in there.

Mr. TURNER. Yes, sir.

Senator NICKLES. Of course, you mine more coal, I guess than anybody else. Do you feel like most of these penalties or fines that are down there are reasonable or not reasonable?

Mr. TURNER. I don't intend to pay one of them, if that answers your question.

Senator NICKLES. I think it does. Do you think some of these fines are harassment?

Mr. TURNER. Well, yes, I would say they are, and I would also say that Turner Bros. is maintaining 3,000 acres of land in the State of Oklahoma today, because they can't get bond releases, and that type of thing. When you talk about harassment, Senator, I'm sure that you are a very prudent gentleman. You drove down here possibly today, and I'm sure that somewhere along the line, you've violated something by driving your car. I'm sure that some patrolman could get you for something, and the mining laws that are interpreted today in the State of Oklahoma, you can be written a violation any day of the week, for something. I don't sit here making accusations against anybody, but if you've got 2 weeks, I'll sit down with you 12 hours a day, and I'll give you a list of horror stories that you won't believe.

Senator NICKLES. Well, I'm interested in your horror stories, and I'm also interested in your statement. I know you only got to put in about half of it, and I'm going to read the other half of it. One final question of you. We did hear a lot of statements from some of the previous panelists that they really felt like part of the problem was

coming out of the Tulsa OSM office. Maybe by overstringent or very aggressive enforcement of the law. Would you agree with that, or disagree, or do you think the problem is enforcement or regulations or the law or a combination of all three?

Mr. TURNER. I think we need regulations. I think it has to have realism, and I think Roger Dahlgren laid out pretty well. When God rains on you, you've got to kind of accept it. There is really nothing that a miner can do about it. Some of the regulations I've been written and fined were what they call subsidence on a piece of property that was completely reclaimed, and I was written because there was a little water pocket. The gentleman from the Denver tech office said well, how big was this water pocket, that's got these guys held up. Well, he wasn't sure. Well, was it 100 foot across. No, it's about 30 feet across. Well, was it 5 feet deep. No, it was about 2 inches deep.

Now I can show you 10,000 of the same things on lands that's not mined between here and Checotah, OK. That's the type of realism that you cannot take in the mining industry's regulation. I don't think there is a miner here that if an inspector walked in and said, I don't think you're doing this right, you need to do some more, that wouldn't get after it, and do it. But, when an inspector walks in and says I'm writing you a violation, because that's not done to my liking, then he's going to get resistance, he can't keep from it. Resistance creates animosities and words lead to people saying I'm getting picked on, and so forth. I don't think they mean to do that, but people are human.

Senator NICKLES. Have you seen cases where inspectors might be coming up to your place or somebody else's place with a fine, or the citation is written by the time they get to your gate?

Mr. TURNER. I'm not in my mines, to that point. I can't answer that.

Senator NICKLES. Mr. Turner, and all other of our panelists, I appreciate your comments and your appearance before the committee, and you've really added a lot to it. We have one other short mining panel. That is, Mr. Robert Cooper of Farrell-Cooper Mining, and Tom McGeady and also Mr. Daniel Beam, and Jim Beam. Are the Beams here?

Mr. JIM BEAM. Yes.

Senator NICKLES. I hope you're not going to read everything you're putting up there.

Mr. JIM BEAM. No.

Mr. DANIEL BEAM. Just to show you what's happened in the law.

Senator NICKLES. You were getting me nervous. We're going to have to move rather quickly, and I apologize for that.

Mr. Cooper.

STATEMENT OF ROBERT P. COOPER, VICE PRESIDENT, FARRELL-COOPER MINING CO.

Mr. COOPER. Thank you, Senator. Farrell-Cooper Mining Co. is a company headquartered in Fort Smith, AK that owns and operates a surface coal mine near Red Oak, OK, with an annual production capability of 400,000 tons a year.

In August 1982, the Office of Surface Mining [OSM] sent to the Oklahoma Department of Mines [ODOM] a 10-day notice contending that a violation was existing at the Red Oak Coal Mine.

The Oklahoma Department of Mines responded appropriately by issuing a notice of violation and then cessation orders when Farrell-Cooper failed to abate the alleged violations. Farrell-Cooper timely challenged ODOM's enforcement action, and on April 5, 1983, the Oklahoma Department of Mines Hearing Examiner dismissed the NOV and the CO's. No appeals were taken by the State, and the decision became final.

On June 23, 1983 and July 20, 1983, OSM again inspected the Red Oak Coal Mine, and issued two cessation orders to Farrell-Cooper for the same violations and cessation orders that the Oklahoma Department of Mines had written and that Farrell-Cooper had successfully challenged ODOM and had been acquitted.

Farrell-Cooper spent in excess of \$50,000 defending themselves against OSM and reached a settlement agreement in the U.S. District Court for the Eastern District of Oklahoma filed in December 1983.

Farrell-Cooper asks that this Subcommittee on Natural Resources Development and Production be aware of this type of double jeopardy that the coal mining companies in the State of Oklahoma have had to contend with in the past, as we ask that this type of enforcement be prevented in the future when Oklahoma is again awarded the enforcement and inspection of their mining program.

Senator NICKLES. Thank you very much, Mr. Cooper.

Mr. McGeady.

STATEMENT OF TOM MCGEADY, PARTNER, LOGAN & LOWRY

Mr. MCGEADY. My name is Tom McGeady and I am with the Oklahoma law firm of Logan & Lowry, a firm which takes some considerable pride in representing a wide variety of clients and matters relating to coal industry. Our firm presently represents four Oklahoma companies and provides representation in coal land reclamation matters to a major limestone producer, to the Oklahoma Wildlife Federation, the Rogers County Homeowners Association, and to numerous individuals.

I would like to take the opportunity to address several remarks which are in the written record, regarding Cherokee Coal Co. Specifically, the allegation that Cherokee has withdrawn or is in the process of disengaging from business in Oklahoma.

As the Oklahoma Production of Mines Tax Tonnage or Production Tonnage Tax Records will verify, Cherokee mined nearly 400,000 tons of coal in Oklahoma, last year producing gross revenues in excess of \$12 million. Cherokee, at this moment has a full-time landman leasing in Oklahoma. We have mining plans in Oklahoma, which are presently projected now beyond 20 years.

At the outset, I would like, on behalf of our firm and our clients, to express our appreciation for your continued interest in the economic well-being of Oklahoma's coal industry. We are grateful for the time and the attention which you devoted to the controversial issue of OSM intervention in Oklahoma, and particularly appreci-

ate the sustained interest which you have shown in assisting the Oklahoma coal industry in attempting to secure a commitment from Oklahoma utilities to purchase some of their own State's coal.

Any inquiry regarding the state of the coal industry in Oklahoma must begin with this issue: The absence of an adequate utility boiler market for Oklahoma's coal production is, in our view, the factor which lies at the core of our industry's present distress. As you may recall, our law firm, the late Bill Patch, and Cherokee Coal Co. have been in the forefront, since 1973, in attempting to persuade Oklahoma utilities to burn some of Oklahoma's coal. We remain as firmly convinced as ever that this effort, if successful, could yield immeasurable economic benefits both to our industry and to the service industries that are associated with Oklahoma's coal production efforts.

You may also recall, in this same connection, that, as recently as October 31, 1984, witnesses at your Tulsa Oklahoma coal industry hearings sought to characterize as impractical Cherokee Coal Co.'s suggestion that GRDA and PSO could burn Oklahoma coal without incurring any added expenses or encountering any serious technical problems. Witnesses at that hearing argued that Oklahoma coal was too hot to be burned in existing boilers, and did therefore not present a practical alternative to the present utility practice of purchasing only sub-bituminous Wyoming coal. You may also recall that, by letter of November 28, 1984, Cherokee transmitted to your office an industry report concerning the successful test burn of Oklahoma compliance grade coal in the GRDA No. 1 unit, a boiler originally designed for Powder River basin coal. Like all of our firm's coal clients, Cherokee continues to believe that the blame for the distressed condition of Oklahoma's coal industry can be laid squarely upon slack demand and low prices in our regional market places. Our firm and our clients continue in the belief that even small scale utility coal purchases (e.g., even 1 million tons per year) would bring an enormous benefit to Oklahoma's sorely distressed coal industry at no additional cost to utility rate payers; and on behalf of the many Oklahoma families who rely on our clients for livelihood, we would respectfully reiterate our many past requests for the intervention of your office and influence in bringing to the Oklahoma coal industry the opportunity to participate on a cost competitive basis, with the Colorado and Wyoming employers who presently enjoy the entire benefit of our State's substantial utility coal market.

Turning to the issue of the Federal regulation——

Senator NICKLES. Mr. McGeady, you're going to have to kind of summarize so I can get to the rest of our panelists.

Mr. McGEADY. OK. As you will recall, our client, Cherokee Coal Co. had concluded by December of 1983 that the Oklahoma Department of Mines had failed to establish itself as a credible enforcement agency. We requested the Interior Department to reestablish a program of Federal inspection and enforcement in Oklahoma. We submitted a great deal of documentary evidence in support of this request. While the official records of this proceeding contain a great deal of contradictory testimony including sworn denials and accusations, which are utterly inconsistent to suggest that virgin groups of witnesses were talking about different State programs.

The photographs which we submitted with their spoil ridge wastelands, gaping coal pits, and toxic acid drainage stand as a mute and unimpeachable indictment of the quality of Oklahoma's coal program in 1983, and I will commend them to the committee's attention.

As we informed you in a written submission, at your October 31 coal hearing, Cherokee, along with five other coal companies has seen much cause for encouragement for the recent development at the Oklahoma Department of Mines. Although some competitive inequities remain, such as unpermitted coal companies masquerading as a limestone producer, we feel that the Department of Mines has established a strong momentum toward the establishment of a credible enforcement program. We feel that in response to this, the department—

Senator NICKLES. You're going to have to speak up.

Mr. McGEADY. We feel that OSM should establish a time table for withdrawal from Oklahoma, and should disengage from its enforcement role in this State. But, only after the State agency demonstrates a continued commitment to uniform enforcement, efficient coal mine permitting, and a determined disavowal of the old policies of political favoritism and weak enforcement.

We remain firmly committed to the principle of state primacy as we believe did Congress, that the primary role of the enforcement laws are intended to be discharged by the State. We feel that there is a paramount of court consideration that has to be addressed before the completion of this engagement. The continuation of the appropriations for the Department of Mines at a level sufficient for a credible enforcement, and inspection program.

The remainder of my statement I will just submit for the record.
[The prepared statement of Mr. McGeedy follows:]

BEFORE THE UNITED STATES SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

COMMENTS OF THE LAW FIRM OF
LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & MCGEADY;
FIELD HEARING, MUSKOGEE, OKLAHOMA
JUNE 14, 1985

Senator Nickles, Members of the Committee:

My name is Tom McGeady and I am a partner in the Vinita, Oklahoma law firm of Logan and Lowry, a firm which takes some considerable pride in representing a wide variety of clients and matters relating to coal industry. Our firm presently represents four Oklahoma coal companies and provides representation in coal land reclamation matters to a major limestone producer, to the Oklahoma Wildlife Federation, the Rogers County Homeowners Association, and to numerous individuals.

At the outset, I would like, on behalf of our firm and our clients, to express our appreciation for your continued interest in the economic well-being of Oklahoma's coal industry. We are grateful for the time and attention which you devoted to the controversial issue of OSM intervention in Oklahoma, and particularly appreciate the sustained interest which you have shown in assisting the Oklahoma coal industry in attempting to secure a commitment from Oklahoma utilities to purchase some of their own State's coal.

Any inquiry regarding the state of the coal industry in Oklahoma must begin with this issue: The absence of an adequate utility boiler market for Oklahoma's coal production is, in our view, the factor which lies at the core of our industry's present distress. As you may recall, our law firm, the late Bill Patch, and Cherokee Coal Company have

been in the forefront, since 1973, in attempting to persuade Oklahoma utilities to burn some of Oklahoma's coal. We remain as firmly convinced as ever that this effort, if successful, could yield immeasurable economic benefits both to our industry and to the service industries that are associated with Oklahoma's coal production efforts.

You may also recall, in this same connection, that, as recently as October 31, 1984, witnesses at your Tulsa, Oklahoma coal industry hearings sought to characterize as impractical Cherokee Coal Company's suggestion that G.R.D.A. and PSO could burn Oklahoma coal without incurring any added expenses or encountering any serious technical problems. Witnesses at that hearing argued that Oklahoma coal was too hot to be burned in existing boilers, and did therefore not present a practical alternative to the present utility practice of purchasing only sub-bituminous Wyoming coal. You may also recall that, by letter of November 28, 1984, Cherokee transmitted to your office an industry report concerning the successful test burn of Oklahoma compliance grade coal in the G.R.D.A. No. 1 Unit, a boiler originally designed for Powder River Basin coal. Like all of our firm's coal clients, Cherokee continues to believe that the blame for the distressed condition of Oklahoma's coal industry can be laid squarely upon slack demand and low prices in our regional market places. Our firm and our clients continue in the belief that even small scale utility coal purchases (e.g., even a million tons per year) would bring an enormous benefit to Oklahoma's sorely distressed coal industry at no additional cost to utility rate payers; and on behalf of the many Oklahoma families who rely on our clients for livelihood, we would respectfully reiterate our many past requests for the intervention of your office and

influence in bringing to the Oklahoma coal industry the opportunity to participate, on a cost competitive basis, with the Colorado and Wyoming employers who presently enjoy the entire benefit of our State's substantial utility coal market.

Turning to the issue of the Federal regulation of surface coal mine reclamation in Oklahoma, I would begin by noting that our law firm, on December 21, 1983, appeared on behalf of Cherokee Coal Company, to fire the opening shots of what the Tulsa Tribune has since called the "coal mining regulation war" by appearing at an Office of Surface Mining hearing to complain about lax environmental enforcement in Oklahoma. As we stated at that proceeding:

- 1) The only benefit afforded to the coal industry by the tremendously burdensome Federal Coal Mining Reclamation Act was Congresses' assurance that the Act would eliminate the cost of reclamation compliance as a factor in interstate coal sales commerce.
- 2) A weak enforcement program, such as that which existed in Oklahoma at the time, benefits only those companies that have made an affirmative decision to achieve illegal production economies by ignoring the expensive requirements of the reclamation laws. Law abiding companies do not benefit from lax enforcement.
- 3) Unless the reclamation laws are repealed (a result which would probably delight every last coal operator in the country), the State, and if necessary, the Federal Government, has a legal and moral obligation to law abiding coal companies and to the public at large to enforce these laws.

Our client, Cherokee Coal Company, had concluded by December of 1983, that the Oklahoma Department of Mines had utterly failed to establish itself as a credible enforcement agency. Accordingly, we requested that the Interior Department re-establish a program of Federal inspection and enforcement in Oklahoma, and we submitted a voluminous com-

pilation of photographic and other documentary evidence in support of this request. While an acrimonious debate continues in the industry regarding the ultimate blame for the environmental devastation which Cherokee's submissions document, no one has attempted to deny that the ugly reality depicted page after page of photographic exhibits was real and had been allowed to occur here in Oklahoma despite the enactment of the State and Federal Surface Mining Acts. The official record in the Federal intervention proceeding fills several large file cabinets and contains reams of sworn accusations and sworn denials which are so utterly irreconcilable as to suggest that the divergent groups of witnesses were talking about two entirely different State programs. The photographs, however, with their spoil ridge wastelands, gaping coal pits, and toxic acid drainage stand as a mute unimpeachable indictments of quality of Oklahoma's coal program in 1983, and I would commend them to the Committee's attention.

While two other Oklahoma coal companies ultimately joined Cherokee in requesting Federal intervention, Cherokee's refusal to countenance production economies achieved at the expense of the environment has generated a considerable amount of resentment in certain segments of the coal industry, a resentment which has given rise to a host of contradictory and paranoid speculations regarding Cherokee's motivations. While these accusations are distressing, they have not dissuaded Cherokee from its continuing policy of obeying the law while demanding no more from State and Federal regulators than the assurance that the company's competitors are also obeying the law.

As our law firm informed you in a written submission at your October 31, 1984 coal hearing, Cherokee, along with

five other Oklahoma companies, has seen much cause for encouragement in recent developments at the Oklahoma Department of Mines. Although some competitive inequities remain (e.g., an unpermitted coal company masquerading as a limestone producer), we feel that ODOM has demonstrated a strong momentum toward the establishment of a credible enforcement program. As we stated in our October 31, 1984 letter, we believe that OSM should establish a time table for withdrawal from Oklahoma, and should disengage from its enforcement role in the State after the State agency demonstrates a continuing commitment to uniform enforcement, efficient coal mine permitting, and a determined disavowal of the old policies of political favoritism and weak enforcement.

As attorneys, our firm believes that the position of our Oklahoma coal clients in these matters is entirely consistent with the most basic principle that defines the legal relationships between members of a democratic society: That the laws of the republic, duly enacted by the Legislative Branch of the Government, should be obeyed and enforced. If OSM's intervention in Oklahoma has had no other positive effect, it has at least compelled the State to recognize the extent of its own obligation to enforce the duly enacted statutes governing coal mine reclamation. This, in itself, is a sufficient benefit to justify the Federal intervention, and a sufficient argument for the development of a plan of Federal disengagement which is tied firmly to the continued funding of the State program at an adequate level and to the State's continued renunciation of the old patterns of lax enforcement and political favoritism.

Thank you.

Senator NICKLES. Thank you.
Mr. Beam, whichever.

**STATEMENT OF DANIEL BEAM, PRESIDENT, COMMERCIAL
FUELS, INC., ACCOMPANIED BY JIM BEAM**

Mr. DANIEL BEAM. Senator, I am Dan Beam. I am president of Commercial Fuels, Inc., and I'm also a member of the Arkansas Mine Executive Board, International Coal Counsel. I would like to speak to you a little bit differently today, as we're speaking from a landowners point of view, instead of a coal miner's point of view. Kind of a combination of the two.

Before I begin, I would like to read a letter from Mrs. Maude Kennedy from McCurtain, OK. Mrs. Kennedy had land permitted under the interim program, and she asked me to present this letter to you.

GENTLEMEN: In January of 1979, my husband and I leased to Great National Corporation a small tract of coal on our ranch. The area was strip mined on both ends in the 1940's, and had at one time a small underground mine. The mining and reclamation work was completed in June of 1980, and I have been trying ever since to get my land released. I have written letters, and attended a hearing on releasing this land with no satisfaction.

I am a widow, and am 72 years old. I am pleased with the way my land looks, and I do not like Federal and State inspectors going in and out as they please without my permission. I have never been asked by any State or Federal agents what my opinion is about the mining and reclamation work. My husband and I worked hard to pay for this land and I pay my own taxes, so please give it back.

I have asked Mr. Beam to read this statement for me.

Thank you, Maude Kennedy.

I have submitted to you three photographs that were marked areas I, II, and III. If you will examine the photograph marked area I, you will see an area approximately 4,000 feet long by 1,200 feet wide. This area was mined by Great National Corp. starting in 1972, and was completed in 1974. It was returned to us, totally reclaimed, in 1975 with no problem in the payment of land damages, or in having the land reclaimed as we saw fit. The mining on this tract of land had no outside permit costs, the cost of reclamation was approximately \$600 an acre, and bond was set between \$250 and \$1,000 per acre. Incidentally, this is the actual permit for mining on that tract of land.

Photograph II shows an area of 2,600 feet by 1,200 feet wide, that was mined starting in 1974, and was completed and released in 1978. Again, there were no problems in reclamation or payment of land damages and royalty. By the time that area II was permitted, there had been some revisions in the Oklahoma law that required outside engineering work to be done on the application. This outside work totaled approximately \$4,000. The land in area II was reclaimed for approximately \$750 an acre, and bond was calculated at \$1,000 per acre. This is the actual mining permit application for that section of land.

Senator NICKLES. When was that?

Mr. DANIEL BEAM. 1978. The land in area II was reclaimed for approximately \$700, I said that, and coal on both area I and area II were privately owned with royalty payments of 0.50 cents per ton for the coal, and 0.50 cents per ton for surface damages. There

were no bonuses paid to the coal owner for the signing of coal leases on area I or area II.

Now, please look at photograph III which shows an area which is 2,600 feet long and 1,100 feet wide. Mining on this site was started in November 1980, and to date it has not been reclaimed. As you can see by the photo, area III is joined by area I on the west side, and by area II on the east side. All three areas were mined by the same company employees, the same equipment, the coal was sold to the same consumer, and the same surface owners were involved. The only difference between this area and the other areas, is that area III was mined after Public Law 95-87 and that area III contains Federal coal. In obtaining the right to mine the coal on area III, the company had to pay a bonus of \$20,000 for the coal lease. The coal royalty of 12½ percent or an average of \$5.50 per ton was assessed, with an additional 0.50 cents per ton going to the surface owner.

The permit cost for the interim permit only was a cost of \$44,000. That is this document right here. This is what it took to permit after Public Law 95-87. With a cost of \$35,000, for the permanent program permit, which is not here that was submitted to OSM in 1982, and has yet to be issued. Also, hundreds of man-hours have been spent by company employees involved in the permitting process. To date, the company has spent \$4,500 per acre in reclamation costs, and it is estimated that an additional \$3,000 to \$4,000 is needed to complete the project. When the company started mining area III in 1980, they were employing 30 miners, 5 clerical and supervisor personnel, and were making a profit mining coal, reclaiming land to the landowners satisfaction, and paying their bills. In less than 5 years, they have no employees left, and they have been unable to pay suppliers, workers or surface damages.

The interim permit contained approximately 100 acres with the bonding divided into three phases. Phases I and II were bonded as the mining operations were started, but unknown to us, OSM never required the bond for phase III to be posted. Under the interim program, mining was allowed to continue while the permanent program permit was being processed. Due to OSM's inability to process a permit in less than 2 years, it allowed the company to mine the entire mining unit, and has created a situation where we have personally 40 acres of mined land with no reclamation bond posted. When these facts are taken into consideration with the company's current status, we are now in a position of having virtually no chance of ever getting our land reclaimed.

How can these things happen when the law clearly States and I quote:

The purpose of this act is to assure that the rights of landowners and other persons with legal interests in the land and appurtenances thereto are fully protected from such operations.

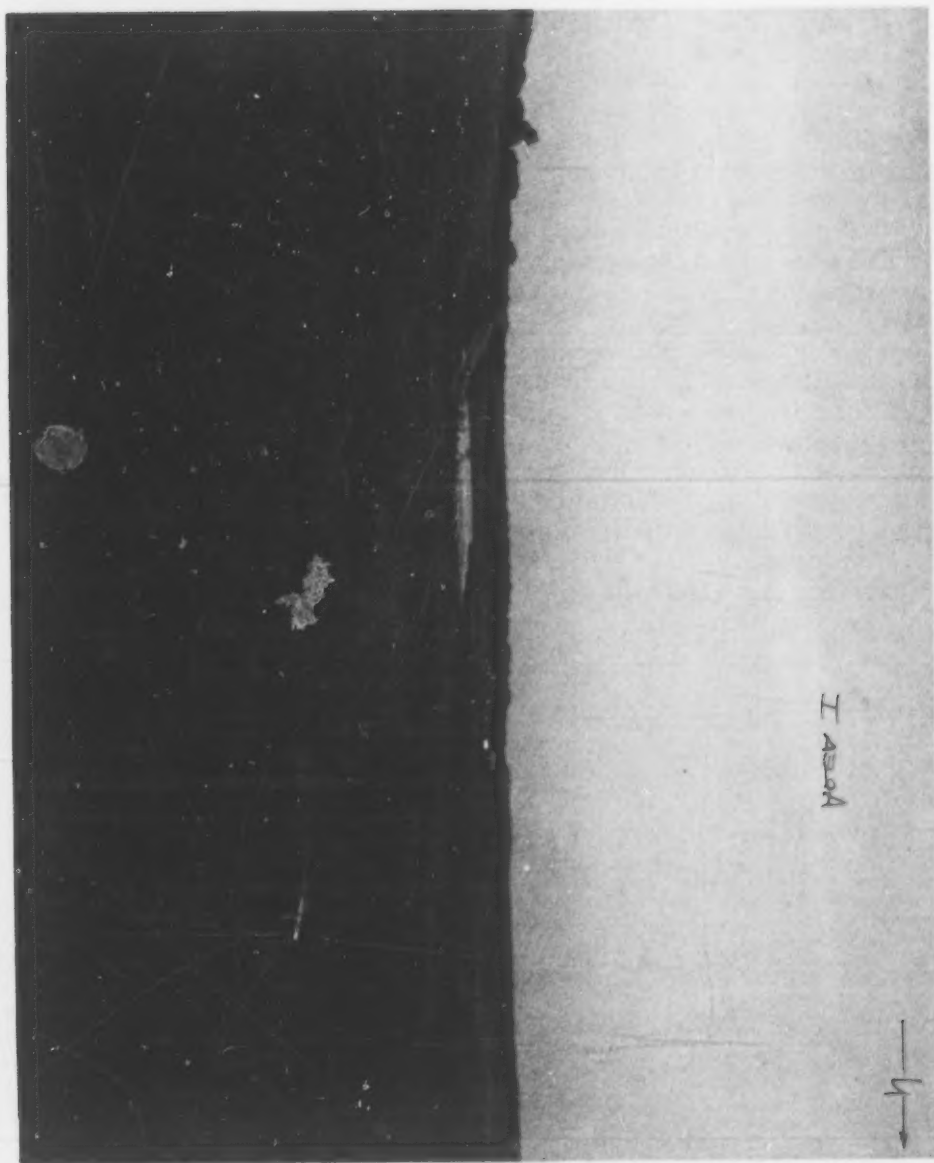
The answer is clear. Oklahoma is a coal producing State made of small coal operators, and Oklahoma is a State that contains a very diverse spectrum of mining conditions. Public Law 95-87 in its effort, in many instances, to overprotect the environment and landowners has in effect, condemned the environment and landowners to be the long-term losers in Oklahoma mining. What we have

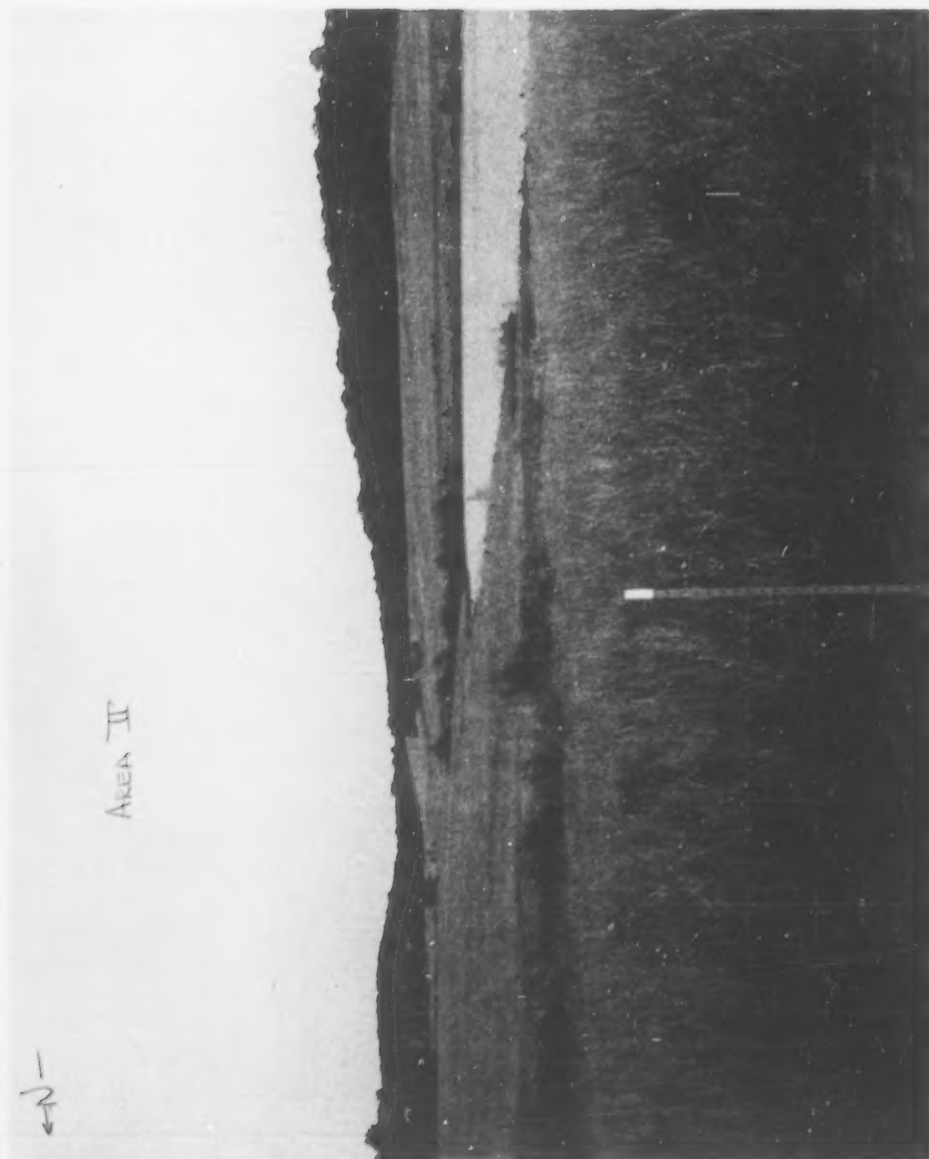
today is a very rigid, highly costly law coupled with overzealous enforcement. A law that makes it all but impossible for the small Oklahoma operator to survive. Even the most highly efficient and competent operators in this State are in serious financial straits due to Public Law 95-87. The landowners and the environment lose because, as Public Law 95-87 slowly forces these small operators out of business, reclamation is not being accomplished. There are many areas in the State where adequate bond was posted, but no reclamation to date has been done.

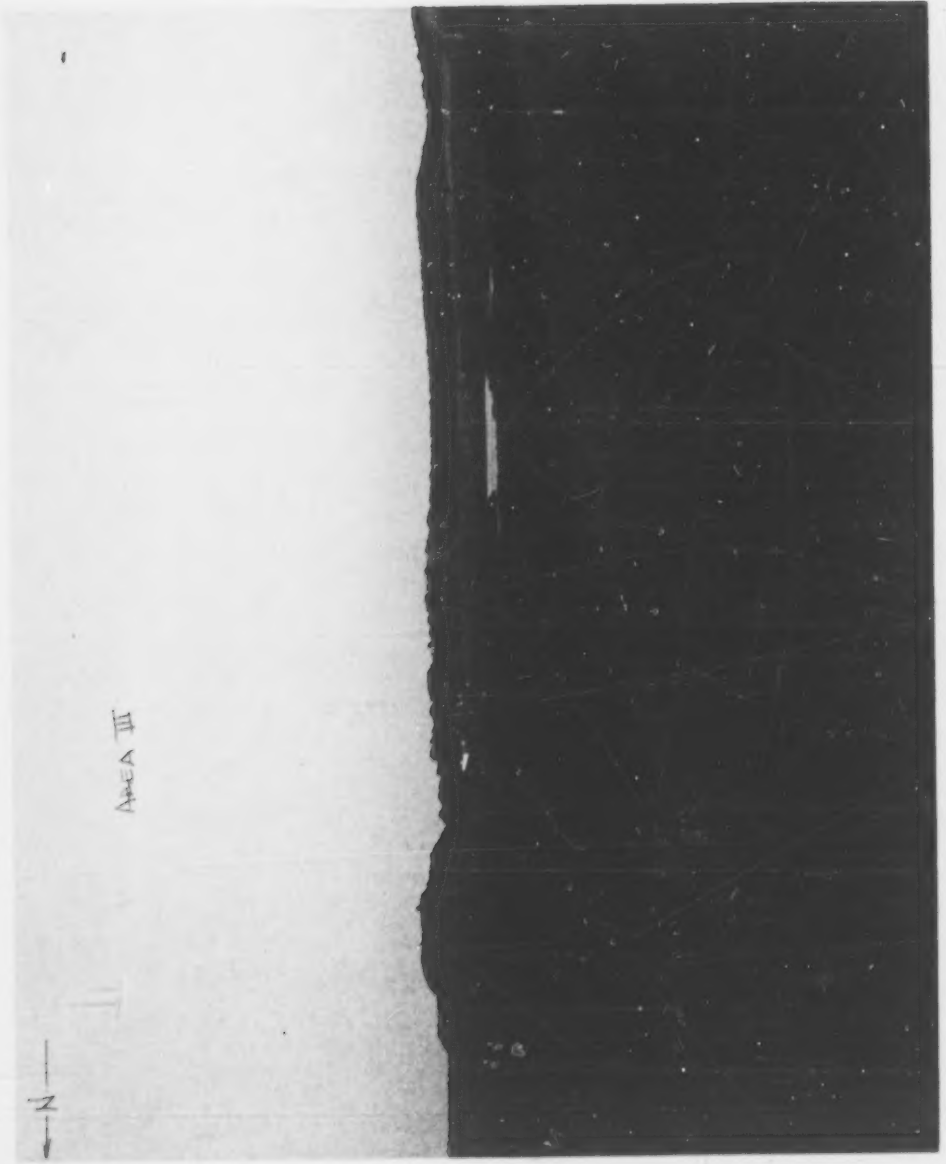
The solution to these problems are as clear as the problem itself. In order for the Oklahoma coal industry to again become a viable and profitable economic factor, changes must be made in the Oklahoma Permanent Rules and Regulations that reflect the diverse nature of Oklahoma mining. Changes which allow flexibility, and yet insure that environmental protection is adequate. Changes which are geared to regulate the small operator, not the large mines of the Western States. If changes are not made, I feel sure that coal mining in Oklahoma will soon be another chapter to be filed away in the Oklahoma history books.

Thank you.

[The photographs follow:]







Senator NICKLES. Thank you, very much, Mr. Beam. Jim Beam, do you have anything that you wanted to add?

Mr. JIM BEAM. Maybe answer some questions would be all.

Senator NICKLES. My questions are going to have to be short, because we're all limited on time. Just a quick question on the three pictures that you have shown. Basically in looking at these, and all of the people can't really notice, but area I and area II has been reclaimed and looks very well. The area No. III, you say area III was mined after the reclamation law was passed, and you say it's made you jump through some many extra hurdles, or for what reason can't you end up reclaiming area III as nicely as I and II?

Mr. JIM BEAM. Well, area III, sir, is Federal coal, and this is under OSM entirely, and the State had nothing to do with it. The company has virtually gone out of business.

Senator NICKLES. Is this your company that is mining the coal?

Mr. DANIEL BEAM. I work for them. I ran their mining operations for 13 years, until last month.

Senator NICKLES. But, they went out of business, and they walked away from the land?

Mr. DANIEL BEAM. Well, they haven't left yet, but they don't have any money to buy fuel or pay operators so it's just sitting there.

Senator NICKLES. Was it bonded?

Mr. JIM BEAM. No, sir, that's what we are saying through OSM's failure to come up with a permanent program permit on this property, it allowed the company to continue mining and not enough bond was ever posted. The last 40 acres has no bond on it whatsoever.

Senator NICKLES. And that is where the problem is?

Mr. JIM BEAM. Well, the problem is on the whole 100 acres. None of it is completed but at least there is bond on about two-thirds of the property.

Senator NICKLES. Most of the producers that we've heard from today have been complaining that OSM was demanding too much bond and then wouldn't release the bond. Would you agree with their statements?

Mr. JIM BEAM. Well, the bond is rather high on this particular piece of property but I think with today's costs the actual amount that is being bonded on each acre is high. It is the fact that it takes so long to get it released and because of the uncertainties in the programs in the rules and regulations and bonding companies don't want to bond it. You have nearly got to put up a cash bond to be able to bond land.

That shouldn't be and if they could settle on some sort of a program of a workable solution to the problem where bonding companies would come in and bond and a operator didn't have to tie up all of this capital putting up cash bonds. I don't think \$3,000 or \$4,000 an acre is too excessive.

Senator NICKLES. Your graphic illustration is showing the amount of paperwork involved to obtain the Federal permit.

Mr. JIM BEAM. This is an interim program permit of Public Law 95-87 through OSM. It is not through the State. We dealt directly with OSM in Denver and this is just an interim permit. There was estimated, the USGA estimates of coal in that area at the time we

got this permit was 135,000 tons. It ended up being 270,000 tons but this was what was required.

I feel that is OSM has their way with the State sooner or later every State permit will be this large or larger.

Senator NICKLES. Mr. McGeady, was your group one of the groups that was asking for OSM to come in to the State and complaining that the State was not doing an adequate job in the regulation of Oklahoma mines?

Mr. McGEADY. Yes, sir. Our firm represented or ultimately represented three coal companies that sought the OSM intervention. I think all three of them would be unanimous in their opinion that they felt it was justified and necessary and has yielded a considerable benefit for Oklahoma in the form of reclamation which would not have otherwise been performed.

Senator NICKLES. Are all three companies, do they believe that the State should take over control of the regulation of the mines today?

Mr. McGEADY. I think that is very specific in the face of the act. The Congress plainly mandated that the primary responsibility of enforcement should belong to the State and I feel that there has been a very encouraging momentum developed for a creditable State program.

Senator NICKLES. To our panelists, thank you very much for your comments.

Our next and final panelists, we have Harvey Haynes representing the United Mine Workers from Fort Smith and Ms. Maggie Gover, director of Oklahoma Legal Services Center, and Bill Wilson, Haskell County Conservation District.

Mr. Haynes, would you care to be first?

STATEMENT OF HARVEY HAYNES, ON BEHALF OF THE FORT SMITH UNITED MINE WORKERS

Mr. HAYNES. One of the major problems we have heard here today, that the enforcement of OSM, the discriminatory enforcement and maybe some of the nitpicking regulations that they have in force and I believe that something can be done about that and I believe that you being here, you can see that something is done about that. I think to put that aside, the major problem of the coal industry today is the market. We have got a market for Oklahoma coal but they are using Wyoming coal instead of Oklahoma coal.

Over 10 million tons of Wyoming coal is being burnt annually to date and the market is going to expand in the future. Oklahoma has 7 billion tons of coal reserve and we are not burning any of it in these powerplants.

Now, with the freight cost of the Wyoming coal, I believe that the Oklahoma coal is cheaper to burn now than the Wyoming coal and I believe that we can blend part of the Oklahoma coal with the Wyoming coal if we can get the utilities to take part of this Oklahoma coal. It may take legislative action but we certainly need to do something when all of this Wyoming coal is coming in and there is a severance tax going out of the State and job losses and everything. It is just a crying shame that we can look out there on the railroad track and see coal cars and coal cars from Wyoming

coming into the State of Oklahoma, right over the Oklahoma coal beds and the Public Service in Oologh is setting on a coal bed. We need to mine some of this Oklahoma coal.

Thank you.

Senator NICKLES. I appreciate your coming. Ms. Walters, let me hold you until last if I can and then I want to move out and see what you have to show. You are not Mr. Jamison?

Ms. DORROUGH. I am not Mr. Jamison.

My name is Candace Dorrough.

Senator NICKLES. Candace Dorrough, I welcome you to the committee and please proceed.

STATEMENT OF CANDACE DORROUGH, ON BEHALF OF THE OKLAHOMA WILDLIFE FEDERATION

Ms. DORROUGH. I am a staff member of the Oklahoma Wildlife Federation, and I am presenting the following comments on behalf of its members and directors. We would like to thank Senator Nickles and the Senate Committee on Energy and Natural Resources for the opportunity to present these comments.

OWF is a private, nonprofit organization incorporated in 1950 and now consisting of 10,000 members and 43 affiliated clubs. The Federation is dedicated to the wise use of natural resources. We feel the coal industry in Oklahoma is a potential threat to the quality of those resources. Our interest is to ensure that coal companies operate within Federal and State regulations to reduce the potential for degradation of Oklahoma's land and water.

Enforcement by the Oklahoma Department of Mines prior to the Federal takeover by the Office of Surface Mines was a dismal failure. Standards were seldom enforced properly, resulting in gross abuses to the environment and inadequate protection for the public. Although enforcement problems continue, we feel that federal involvement has been a positive development and that Oklahoma would benefit from continuing this relationship. ODM's recent inspection staff turnover of an early 100 percent is an example of the improvements made since OSM's takeover. We're also pleased to find that the inspection staff has increased from 6 to 10. It is an indication that ODM's personnel prior to Federal intervention was not at a level capable of properly regulating Oklahoma's coal industry.

We also feel that in the event control is returned to the State agency, the legislature must appropriate sufficient funds to maintain high standards of regulations.

OWF cannot agree with recent claims that the coal industry is suffering from overregulation. Rather, it appears the current slump is due to marketing problems. Because of its high sulphur content, Oklahoma coal is not attractive to a domestic market where emissions are strictly regulated. Because of the current depressed prices of oil and gas, coal is not the low-cost alternative it once was. That condition, and not overzealous inspectors, have caused the coal industry to decline, in much the same way that the oil industry has declined in recent years. Certainly, this should not serve as an excuse for coal operators to ignore their reclamation obligations.

Coal mining is potentially one of the most destructive industries in the State. It does not take too many violations of the requirements governing soil protection, revegetation, soil erosion, water quality, and drainage for mined lands to suffer irreversible damage. Oklahoma cannot afford to let its water become contaminated and its valuable farmland become sterile. We would also add, in the event that the coal industry in Oklahoma does expand due to increased use by local utilities, it would be imperative that the industry be tightly regulated.

A number of Oklahoma coal companies have proven it is possible to combine a successful operation with responsible reclamation. Companies who have chosen and been allowed not to fulfill their obligations to reclaim sites, enjoy production economics not enjoyed by those who follow regulations.

Reclaiming land is expensive, but like all operating costs, reclamation expenses are added to the price of coal and should not present a hardship if the industry is regulated fairly and equitably.

There have been some claims that small coal companies bear a disproportionate share of violation citations and are inspected more frequently than large operators. In view of the fact that Oklahoma's coal industry is characterized by small operators, this claim is not surprising. Many small companies may not have the technical expertise or cash required to properly reclaim sites. In times of restricted cash-flow, reclamation is often the first corner to be cut. For this reason, small companies require greater attention from ODM and OSM, much as small oil and gas operators require more frequent inspection.

The Wildlife Federation understands and appreciates the importance of the coal industry of Oklahoma's economy and does not seek to make its operation prohibitively expensive. However, we cannot allow some of our coal industry to operate at the expense of our land, our water and our health.

We feel there have been positive changes recently in the regulation and inspection of the coal mining industry. We would like to see this trend continue to make Oklahoma's coal industry both safe and productive.

I would like to thank you again for this opportunity to come here.

Senator NICKLES. Thank you very much, Ms. Dorrough.
Mr. Wilson.

STATEMENT OF BILL WILSON, ON BEHALF OF THE HASKELL COUNTY CONSERVATION DISTRICT AND THE OKLAHOMA ASSOCIATION OF CONSERVATION DISTRICTS

Mr. WILSON. Thank you, Senator.

My name is Bill Wilson. I am from Kinta in Haskell County. I am here today representing the Haskell County Conservation District and the Oklahoma Association of Conservation Districts where I serve on the board of directors of both organizations.

The Haskell County Conservation District, in cooperation with the Oklahoma Conservation Commission, administers the funds used in reclaiming Oklahoma's abandoned coal mined lands under title IV of Public Law 95-87. Inventories conducted by the Conser-

vation Commission and local conservation district in the late 1970's determined that there are over 29,000 acres of unreclaimed or partially reclaimed coal mined lands in the State. Fifty sites were categorized as priority I hazards causing extreme danger to the public health and safety.

In my area, Haskell County, there are over 6,000 acres of abandoned surface mined coal lands. Our conservation district is acutely aware of the public health and safety problems and the environmental degradation caused by these abandoned mine lands. I am proud to report that, in the last three years, nine of the most hazardous sites in Haskell County have been reclaimed. However, only 120 acres of the 6,000 acres have been reclaimed. There is still a great deal of reclamation work to be accomplished before all of the serious public health and safety problems are eliminated.

In Oklahoma a great deal of reclamation has taken place since the Conservation Commission's State Reclamation Plan was approved in the spring of 1982 by the Office of Surface Mining. To date 26 reclamation projects have been completed under the State Program. An additional seven projects have been completed in Oklahoma by the Soil Conservation Service through the Rural Abandoned Mine Program. A total of 715 acres have been reclaimed to date. Currently six projects are under construction and will reclaim another 184 acres. The Conservation Commission has selected 40 additional sites for reclamation which are in various stages of planning and design. It is estimated that 1,118 acres will be reclaimed by these projects. In the 3 years Oklahoma has operated an active Abandoned Mine Land Reclamation Program, the Conservation Commission and local conservation districts have demonstrated they can accomplish a significant amount of reclamation work.

There is however a black cloud hanging over Oklahoma's AML Program. When the OSM took over the inspection and enforcement of Oklahoma's coal regulatory program on May 1, 1984, they eliminated construction funding for the Conservation Commission's AML Program. It is questionable whether the Office of Surface Mining had the legal authority to take this action. OSM never took over primacy of Oklahoma's Regulatory Program and, therefore, the Conservation Commission's AML construction funds should not have been withheld.

OSM's action in withholding construction funds is making it very difficult for the Conservation Commission to efficiently manage the Abandoned Mine Land Reclamation Program. After the final six construction projects are completed this summer, several project inspectors will have to be laid off. Thirteen months have gone by since OSM's takeover. There are now 11 AML sites with significant public safety hazards that have completed reclamation designs. However, the Conservation Commission cannot bid the jobs for construction because OSM continues to hold up the AML funding.

Senator, I would urge you and the Senate Committee on Energy and Natural Resources to review OSM's action against Oklahoma's AML Program. I believe you will find that they have acted improperly. Their action has stymied needed reclamation for the past 13 months. It is time to put an end to OSM's position of holding Oklahoma's AML Program hostage.

[Attachment to Mr. Wilson's statement follows:]

STATUS OF OKLAHOMA'S ABANDONED MINE LAND RECLAMATION PROJECTS AS OF JUNE 1, 1985

Funding source	Completed projects	Acres (actual)	Projects under construction	Acres (estimated)	Projects with completed design	Acres (estimated)	Projects selected for reclamation	Acres (estimated)
Federal discretionary	5	35.9	1	152.1	0	—	0	—
RAMP (SCS)	7	359.7	1	40	0	—	0	—
Fiscal year 1982 grant	9	93	0	—	0	—	0	—
Fiscal year 1983 grant	12	226.4	3	30	0	—	0	—
Fiscal year 1984 grant	0	—	1	61.5	6	235	1	2
Fiscal year 1985 grant (pending)	0	—	0	—	5	141	0	—
Fiscal year 1986 grant (proposed)	0	—	0	md	0	—	10	290
Fiscal year 1987 grant (proposed)	0	—	0	—	0	—	18	450
Totals	33	715	6	183.6	11	376	29	742

Note — Summary of Oklahoma's reclamation to date. Total projects: 79; total reclaimed acres: 2016.6 (actual and estimated). Summary of Oklahoma's abandoned mine lands (source: national abandoned lands inventory). Total identified problem areas: 260; total identified acres of AML: 29,465.

Mr. WILSON. In testimony here today we heard Mr. Christensen say that OSM feels that Oklahoma has made sufficient progress in correcting the problems in the Department of Mines. We have heard Ms. Townley present a statement, something about changes in her department and positive steps to correct these deficiencies. What we would like to know if both agencies, Mr. Christensen with OSM and Ms. Townley think they are making a good deal of progress, then why can't OSM release our AML construction money to let us get on with reclaiming some of these old mines that need it so bad.

Senator NICKLES. That money is presently frozen?

Mr. WILSON. Yes.

Senator NICKLES. You can't get any of it?

Mr. WILSON. No.

Senator NICKLES. Has it been frozen since OSM has taken over?

Mr. WILSON. Since April 30, so 13 months ago.

Senator NICKLES. How much money does the State have?

Mr. WILSON. They are holding about \$4 million right now.

Senator NICKLES. \$4 million?

Mr. WILSON. Yes. This thing works like 50 percent of the money that comes in from Oklahoma comes back to Oklahoma, 50 percent is put into the national pot. We have used our 50 percent which we have drawn some money in addition to that. You know, we have been able to get some money from States like Wyoming that take in tremendous amounts of money because of their mining so many tons. You know, they can't use all the money that they are paying in and there are AML programs that we have been able to, we have tried to keep enough plans enough, engineering ahead, and when that money is available, like we have got 11 projects setting on the shelf right now ready to do.

Senator NICKLES. Is this in Haskell County?

Mr. WILSON. In the whole State.

Senator NICKLES. Oh, the whole State.

Mr. WILSON. Which the most of it is in the eastern part of Oklahoma. Most of these areas over here are like 15 or 16 percent un-

employed and these are working people. Contracts we have let in the last few years have come back, or in the last 2 years have come back almost 50 percent of the engineers estimates on cost and contractors are needing to work and they are, you know, real reasonable. We ought to be taking advantage of that at the time where the economy is depressed enough to the point where we could get almost twice as many cubic yards of dirt moved.

Senator NICKLES. Right now the State's efforts to reclaim some of these abandoned mines has just stopped?

Mr. WILSON. Right, the ones we are working on right now are the ones that I mentioned that we had been able to get some bids in at 50 cents on the dollar so that is money that is left over from some of these other projects and have been able to come back and we have actually reclaimed some sites due to left over money from other projects.

We have got six under construction and when they are finished, that's it. And we can't get any more bids.

Senator NICKLES. Do you know if that is a statutory requirement or could you possibly tell me why that money can't be released? We will check into that and work and see if we can't get that money released because there is no reason not to.

Mr. WILSON. Well, it is our opinion that they violated their own regulation and we feel like if we could ever get an legal opinion, that their attorneys would tell them the same thing. We think they are just holding this, holding us hostage and holding this money, trying to force the State to come in line with their regulatory problems and we don't have anything to do with that part of it.

Senator NICKLES. Well, I want the State to come in line too but we need to clean up some of those abandon mine sites and I think we ought to be taking advantage of it if it is there.

Mr. Watts.

STATEMENT OF CLEAL WATTS, ON BEHALF OF HFCO, INC.

Mr. WATTS. We want to thank you. I am Cleal Watts, Dallas, TX, HFCO, Inc. and anything you say about the small miners is an understatement in my mind. We say we are the world's smallest coal operator and we really mean we are really small.

All right, sir, I want to thank you for the opportunity to be at a hearing. We think that the dialog is a very necessary thing and we feel like that we as small business men and miners speak a different dialect than the people who direct us. It is unfortunate but it is that way with everything. Like if you go to a plumber's party you had better be a plumber or you won't appreciate half the party.

We think about the problem of the mines of the State of Oklahoma that are open now and that were open a few years ago and I believe the fraction is like one-fifth.

This becomes pretty serious and we think it is really, well, we are reminded of the environmentalists and we are reminded of the market and we are reminded of different costs and the slowdown in the economy. But the thing we are reminded most if we try to remember and I heard Lee Iacocca say the other day that some people have short memories. But if you will recall Ross W. Hall of the State of Oklahoma came up with a very reasonable program

and it was unbelievable the way us Texans and south Oklahoma contractors will avoid Oklahoma because these fellows were so competitive. I couldn't believe that dirt could be moved for the price they move it. So I don't go along with the price of the coal.

What I think is the matter, or what our company thinks is the matter with it, is the administration, the way this thing is administered. We think that it can be administered differently and that administration is the cause of this. We are setting there with fines approaching the amount of money that our landowner asked for the land. Which let me give you numbers. Like \$175,000 in fines. That landowner offered to sell us the land for \$200,000, but we are not in the land-owning business, keep your land. You are a good man and we appreciate what you have done for us, the opportunity, and we paid them a half a million dollars in royalty. But in the meantime, we worked several years there and we accumulated about 50,000 hours of experience with a group of men that made up the mine.

You have to understand that 5,000 hours is a Ph.D. We never had anybody that came close to that to inspect us nor could understand what we did. We have things that we offer that we do according to the law, you know, like handling the topsoil and things like that, that aren't even included in the law and there are simple things like, for example, AIA said the topsoil should be handled a certain way. We say it could be handled a certain way and they say, no, that's not on the notice of violation as such.

We get a chance for a hearing, no, we are not operating so we don't get a chance for a hearing. Its really tough and time is of the essence.

What I am trying to say is the reason Oklahoma came up with these turnpikes and these flood control watershed programs that were the covet of every State in the Union was that we had good administrators and the administration is what we need. Now the duty of the government, I don't care whether it is State or Federal Government, is supposed to keep us or supposed to protect us and keep us from killing each other or to keep someone else from killing me. It is not the responsibility of government to tell me what to or how to live or to take my life or to execute me. That's what is here.

We look at numbers and percentages. You know you stand a 75-percent chance of being hung according to that.

If I send out a shipment of a load of coal to my destination, I don't expect it to arrive 75 percent of the time, I expect it to arrive 100 percent of the time. But we are playing with things and it is a different dialect, it is a different way of thinking and believe me these hearings, I know its hard for you and I know it takes your time, but it is meaningful and I think it is the only way we are going to be able to get the administration that is necessary.

If we get these things administrated properly, I think that we will enjoy the turnpikes and the watershed programs with the success and that coal will be another success in Oklahoma.

Senator NICKLES. Thank you very much, Mr. Watts. Ms. Walters. Ms. WALTERS. Yes.

Senator NICKLES. Do you want to start with the film?

Ms. WALTERS. Yes, we want to start with the video first.

Senator NICKLES. Well, if you do, do you mind if I move back there so I can see it?

Ms. WALTERS. No.

[Whereupon a video tape was shown.]

Senator NICKLES. Ms. Walters.

**STATEMENT OF JULIE WALTERS, ON BEHALF OF THE WAGONER
COUNTY CLIENTS COUNCIL**

Ms. WALTERS. Senator Nickles, and other members of the subcommittee, thank you for hearing the testimony of the Wagoner County Clients Council regarding the regulation of surface mining of coal in Oklahoma.

My name is Julie Walters and I will be speaking on behalf of the Wagoner County Clients Council which is made up of citizens of Wagoner County who live in the area where coal mining has been taking place since 1982.

We are aware that most of the testimony you will hear today will be from companies who mine the coal and from the people who are charged with the responsibility for the mining of that coal.

Our testimony is from a different perspective. We are here to tell you how it feels when a coal company moves into your living room and becomes an intimate part of your daily life. We are here to tell you how it feels to have your privacy invaded by the blasting, by the drag lines, the trucks, the traffic, and the many other sounds associated with the ordinary activity of mining coal.

We know that you are here to make a determination whether mining regulations should be done by the State of Oklahoma or by the Federal Office of Surface Mining. In our opinion, neither agency has done a satisfactory job. However, our testimony centers primarily on the time when the Oklahoma Department of Mines was responsible for mining regulation.

You will hear from the mining companies that they are being overregulated and that it is causing them to have difficulty staying in business. We are here to tell you that they are being underregulated and they are making it very difficult to impossible for us to stay in our homes. Their only interest in our community is making money.

Our interests are different. We want to live, to raise our children, and when the time comes to die, to die in our own community without any time taken off our lives by pollution of our air and water. When the coal is gone, the companies will be gone. They have someplace else to go. When our houses fall down or our well water becomes undrinkable and we can no longer grow our gardens and our crops, we don't have any place else to go. Our property becomes worthless. We cannot sell it to anyone else. Many people in our communities have lived in the houses where they were born 50, 60, 70, or 80 years ago. Many of the people in our communities are senior citizens; many are living on low incomes and fixed incomes. The rest are working-class people who make a living doing the best we can with what we have got.

I am going to tell you briefly what happened to myself and my family.

The mining started in November 1982. The coal was leased by United Coal and was to be mined by the Paulson Co. from Arkansas. The mining company set its office up right across the road from our house. Trying to make the best of the situation, I took a job working in the office. The company began piling the top soil in an area near the creek. I believe it was in December when a neighbor came storming into the office furious because the dirt had dammed up the creek causing the water to rise into his hog pen and killed his pigs.

It was January when the blasting started and when our troubles began to multiply. We had never been around mining before and certainly were not prepared for the sound or the impact of the blasts that shook our house, nor the dirt that blew around us constantly or the traffic of the trucks and the mining equipment which kept encroaching on our property. In an effort to stop that, we put up a fence at our own expense to keep them away. The closer the blasting came to our house, the more upset we became.

In June, I quit my job with the mining company. During the month of July, the blasting got harder all the time. We requested a seismograph but felt it was too late as they were already blasting very hard.

On August 29, they took the seismograph away. During the time it was in our yard, the company blasted five times. The blasts were very light. The day they took the machine away, they blasted harder than they ever had before, as if to punish us for having requested the seismograph and to let us know there was nothing we could do about it.

On October 21, 1983, our fresh water became polluted and turned to black gum and we informed the superintendent and the foreman of the mining company. Two days later, Paulson, who was doing the mining, turned it over to United Coal, the company who leased the land from the owners. They dug two wells for us trying to get fresh water. The first one was bad; the second one we were able to use for bathing but not for drinking and cooking until sometime later. The man who dug our first well told the mining company that our problem would be corrected if the coal company would pump out the pit which had become a large hole of water and was polluting our fresh water. The coal company informed us that they did not have the time or the money to pump out the hole. In other words, it was just too bad about our water.

In November of 1983, we were forced to seek legal help about our water problem. We had to hire an attorney.

During November and December of 1983, we contacted the Department of Mines in Muskogee, Tulsa, and Oklahoma City; the Health Department in Wagoner County and Oklahoma City; the water resource board, who told us we would have to wait a month until they met to see if we could get on their agenda; the Pollution Control Board; the Governor of Oklahoma's office. I have the phone bills and correspondence. We couldn't get one person to say they would actually help us. They kept saying it was not their responsibility and had us call this department or that board. We got the runaround.

In November, 1983, I personally called Blaney Qualls, deputy chief mine inspector, Oklahoma Department of Mines and he in-

formed me that he could help and would get back to me before lunch that particular day. It is June 14, 1985, and he has not gotten back to us yet.

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In Paulson's permit, it stated clearly that they were to start backfilling upon extraction of coal. The State Department of Mines did not force them to do that or to empty the pit that was contaminating our fresh water. We have photographs of the pit for you to see.

After the pit was filled in, we were able to start using our original water well and had to replace a pump which was apparently damaged by the stuff that polluted our well originally. In May of 1984, we sent a certified letter to Jack Alexander, the owner of the mining company, informing him personally of all the problems his company had caused us. In June of 1984, we received a letter from the coal company's insurance company stating that they were investigating the matter.

We've worked hard for our home and we love it. Paulson put their office right across from our home, with the outdoor toilets, the trash, the large machinery and coal weigh scales and even rerouted the county road down the side of our home. They could have put the office in another place as they were mining a large area.

There is not one person in this room who would have enjoyed hauling water in December 1983, when we had record breaking cold weather along with ice and snow.

We had to eat all their dust and dirt in spite of the fact that the permit states they were to keep all haul roads watered. By the time you got a letter in the mail to those officials which were supposed to enforce that regulation, they required the complaint to be in writing, the weather had changed.

We feel that the coal companies should take a greater responsibility for the residents and the inconveniences they cause. And we believe that the people responsible for enforcing the laws ought to enforce them.

Senator NICKLES. I wonder if I might interrupt you. I have to wrap this hearing up and I also asked you when you gave the video if you could keep it within 8 minutes and that was several minutes ago. Can you summarize it?

[The prepared statement of Ms. Walters follows:]

TESTIMONY
of the
WAGONER COUNTY CLIENTS COUNCIL

SUBMITTED TO: The Subcommittee on Natural Resources Development and Production, Muskogee Oklahoma, June 14, 1985

Senator Nickles and other members of the Subcommittee, thank you for hearing the testimony of the Wagoner County Clients Council regarding the regulation of surface mining of coal in Oklahoma.

My name is Julie Walters and I will be speaking on behalf of the Wagoner County Clients Council which is made up of citizens of Wagoner County who live in the area where coal mining has been taking place since 1982.

We are aware that most of the testimony you will hear today will be from companies who mine the coal and from the people who are charged with the responsibility for the mining of that coal.

Our testimony is from a different perspective. We are here to tell you how it feels when a coal company moves into your living room and becomes an intimate part of your daily life. We are here to tell you how it feels to have your privacy invaded by the blasting, by the drag lines, the trucks, the traffic and the many other sounds associated with the ordinary activity of mining coal. We want you to know how it feels to breathe the dirt and dust and to have to haul your drinking water in sub zero Oklahoma weather when the well you've depended on for years suddenly goes bad.

We want you to know how it feels to be standing in your front yard when a blast of such magnitude occurs that you are

literally thrown into the air. You get up and see that the front porch has fallen off the house you built with your own hands, the one you raised your five children in, and that it is on fire. We want you to understand how it feels, if you can, when you are ninety years old and can no longer live in that house.

We want you to know how it feels to find that the mining has caused the creek to back up into your hog pen and all the hogs that you depended on for your livelihood have been drowned.

We want you to know how it feels when your well water that has run fresh and clear for five or ten or twenty or thirty or more years suddenly either quits running or becomes unfit to use in your home. Try to understand how it feels to wake up one morning and find that your fresh, clear water has turned to black gunk. Try making your coffee or brushing your teeth or taking a bath or doing your laundry in that.

We want you to understand the helplessness and frustration that you feel when you try to find help from mining companies and from the various state and federal agencies that are charged with the responsibility for protecting our natural resources. I speak of our air, our water, our land, our health and our people, young and old.

We ask you to understand how it feels to be powerless, how it feels to be referred from agency to agency, from company to company, to run your telephone bill up waiting in hold.

We know that you are here to try to make some determination as to whether mining regulation should be done by the State of

Oklahoma or by the Federal Office of Surface Mining. In our opinion, neither agency has done a satisfactory job. However, our testimony centers primarily on the time when the Oklahoma Department of Mines was responsible for mining regulation.

You will hear from the mining companies that they are being over-regulated and that it is causing them to have difficulty staying in business. We are here to tell you that they are being under-regulated and they are making it difficult to impossible for us to stay in our homes. Their only interest in our community is making money.

Our interests are different. We want to live, to raise our children, and when the time comes to die, to die in our own community without any time taken off our lives by pollution of our air and water. When the coal is gone, the companies will be gone. They have someplace else to go. When our houses fall down or our well water becomes undrinkable and we can no longer grow our gardens and our crops, we don't have any place else to go. Our property becomes worthless. We cannot sell it to anyone else. And many of the people in our communities have lived in the houses where they were born fifty, sixty, seventy or eighty years ago. Many of the people in our communities are senior citizens; many are living on low incomes and fixed incomes. The rest are working class people who make a living doing the best we can with what we've got.

The coal in our community is not what we've got. What we've got is the coal mining and we do not believe that any of

you sitting here today would want to live in our community during the stripmining of coal.

As an example, I am going to tell you briefly what happened to me and my family.

It was in the early spring of 1982 when we first heard that coal mining was coming. We were very upset. We did not know what to expect but there was nothing we could do about it. It was too late. The mining started in November of 1982. The coal was leased by United Coal and was to be mined by the Paulson Company from Arkansas. The mining company set its office up right across the road from our house. Trying to make the best of the situation, I took a job working in the office. The company began piling the top soil in an area near the creek. I believe it was in December when a neighbor came storming into the office furious because the dirt had dammed up the creek causing the water to rise into his hog pen and kill all his pigs.

It was January when the blasting started and when our troubles began to multiply. We had never been around mining before and certainly were not prepared for the sound or the impact of the blasts that shook our house, nor the dirt that blew around us constantly or the traffic of the trucks and the mining equipment which kept encroaching on our property. In an effort to stop that, we put up a fence at our own expense to keep them away. The closer the blasting came to our house, the more upset we became.

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During November and December of 1983, we contacted the Department of Mines in Muskogee, Tulsa, and Oklahoma City; the Health Department in Wagoner County and Oklahoma City; The Waste Resource Board (who told us we would have to wait a month until they met to see if we could get on their agenda); the Pollution Control Board; and the Governor of Oklahoma's office. I have the phone bills and correspondence. We couldn't get one person to say they would actually help us. They kept saying it was not their responsibility and had us call this Department or that Board. We got the run around!

In November 1983, I personally called Blaney Qualls, Deputy Chief Mine Inspector, Oklahoma Department of Mines and he informed me that he could help and would get back to me before lunch that particular day. It is June 14, 1985, and he has not gotten back to us yet.

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We've worked hard for our home and we love it. Paulson put their office right across from our home, with the outdoor toilets, the trash, the large machinery and coal weigh scales and even rerouted the county road down the side of our home. We had to live with coal dust and dirt and dust from all the dump trucks and 18 wheelers night and day. They could have put the office in another place as they were mining a large area.

There is not one person in this room who would have enjoyed hauling water in December, 1983, when we had record breaking cold weather along with ice and snow.

We had to eat all their dust and dirt in spite of the fact that the permit states they were to keep all haul roads watered. By the time you got a letter in the mail to those offices which were supposed to enforce that regulation (they

required the complaint to be in writing), the weather had changed.

We feel that the Coal Companies should take a greater responsibility for the residents and the inconveniences they cause. And we believe that the people responsible for enforcing the laws ought to enforce them.

There are other people in our community who have suffered much more than the Walters family. Mr. Saunders, for example, is past ninety years old. The blast that knocked him into the air blew all his windows out, knocked his front porch off, collapsed his roof and caused a fire in his home. He had to pay the Fire Department \$200.00 for answering his call for help. He has never received any compensation for his loss.

All of our friends and neighbors have complaints about damages done to their property and disturbances to their lives.

We believe that there are many questions that should be raised about the enforcement of mining regulations and about the regulations themselves. We don't believe the regulations go far enough in requiring protection for the homes and livelihoods of people in areas where mining will be undertaken.

We are not experts in running mining companies or in running governments but we have some concerns that we believe should be addressed. Our observation is that there is some question about the expertise of the people who run the companies and who run the government. Ask yourself these questions: If a company knew that the cost of mining within the regulations made the mining

operation too expensive to make money, why would they lease land and mine the coal? Why would state governmental officials allow companies who they have already cited for serious violations by their own people allow them to continue to operate and to apply for new permits while they had outstanding violations? Why would a state which has been unable to give its state employees a raise in over two years and is very near the bottom of the heap in the way it pays its teachers allow assessments against mining companies to go over \$8 million dollars in an 18 month period and collect less than \$200,000 in penalties assessed?

Why are mining companies treated differently than private citizens when it comes to enforcing the law? When they apply for permits to mine, it's just like me or you applying for a license to drive a car. We agree to abide by the laws of the state. If we get caught breaking those laws, a patrolman writes us a ticket. We know what it is going to cost us to pay for that ticket. If we don't pay, they come after us and we pay more for ignoring the first ticket. We know all that and I think we would all assume that well over 90% of traffic tickets issued get paid. I doubt that there are very many of us who ever drive more than fifty miles anywhere that do not see at least one Highway Patrolman. It makes most of us very aware of the traffic laws and the penalty for not paying them. I wonder if we would be so careful if we knew that we weren't going to have to pay the fine but about 3% of the time--3 times out of a hundred?

When I get a tag to drive my car, I have to prove that I have insurance which will pay for damages in the event I have an accident. The amount of insurance I have to carry on my car is more than a lot of mining companies have to put up to guarantee that they will fulfill the reclamation requirements of their mining permits.

Are you surprised that a company will forfeit their bond instead of spending the money necessary to clean up the damage of mining?

We pay our taxes in order to pay for government services. Those services include the enforcement of the laws of the State and the Country. Those services include representing the interests of citizens like us and passing laws that protect us from the exploitation of our resources, the pollution of our air and water and the protection of our property, our health and our lives. We have raised the questions. We are confident that the records are available in the state and federal agencies. We believe that they will speak for themselves.

The people who you see here have already suffered damages and while we will still try to correct the damages to our community, it is too late for many of us. We are here today because we don't believe anybody else should be subjected to these conditions. In order to prevent that, we have some recommendations:

1. Before a company is issued a permit, they should be required to personally notify all residents within a

two mile radius of the proposed mine that they are applying for a permit. Notices in the classified sections of newspapers is not adequate. Neither is nailing something to a post.

2. Included in the permit application, a company should be required to specify the process for dealing with damage complaints from residents of the community in a timely manner. The companies should be required to furnish reports of all complaints received from residents to the regulatory agency along with information on how the complaints were resolved.
3. Companies should be required to hold community meetings before the license is issued to explain the mining process including the amount of equipment to be brought into their community, the number of outside workers who will come into their community, the procedures to be followed, what the residents can expect when blasting is done, how they will be alerted to blasting, the method to be used in the event of damages to their homes or property including their water, and a pre-mining survey should be made of houses, buildings, water wells, and land certified correct by both property owner and/or resident and the mining company.
4. The regulatory agency should make surprise inspections and they should visit residents in unmarked cars. Seismograph tests should be made with seismographs

installed at different times and different locations and without the previous knowledge of the mining companies. Most of us don't like it much when a highway patrolman hides behind a sign or a tree and catches us speeding but we pay the fine just the same. I have yet to see an officer of any kind put up a sign that says there will be a highway patrolman 100 yards away from you for the next thirty days. When the seismograph was placed in my front yard, in effect that's what happened for the mining company.

5. Mining companies should have to pay for their mistakes. It's not enough to say they have corrected the deficiency and they aren't going to do it anymore. How many of us have had to furnish proof that we have corrected safety problems with our cars, promised that we won't speed or do whatever we got caught doing again and had to pay the fine anyway? Saying there are not enough mining inspectors is not justification; not with \$8 million dollars in uncollected assessments outstanding. We understand that we are talking about assessments of penalties and that the companies have a right to appeal. It just doesn't seem logical that less than 5% of the assessed violations are collectible. It is particularly hard to believe because we know that inspections are made so rarely and so many things happen that inspectors never see.

6. Reclamation requirements should be more stringent; bonds should be higher and inspections of reclamation efforts should be made more often and more consistently. The mining in our community has done damage to those of us who live there but we believe that time will show that damage has also been done to the streams, the water tables, perhaps to the aquifers and to all the people who are dependent on those water sources. All Oklahoman's will wind up paying for that damage.

In closing, I want to tell you what happened at the First Baptist Church in Clarkesville one Sunday morning. The congregation had gathered as they always do for the worship service. The miners were working that day and exploded a charge that sent dirt and debris including a rock that weighed several hundred pounds into the yard of one of Clarkesville's citizens. It shook the community soundly. So soundly in fact, that one corner of the church collapsed and the building suffered other damage as well. Reverend Peterson who is here with me is the pastor of that church. He will confirm that it was a very frightening experience and that the miracle that day was that nobody was hurt.

We appreciate your allowing us to testify today and ask now that you take a brief look at our community and our people on this short 3 minute video tape. Thank you for your attention.

Ms. WALTERS. Well, I have summarized it down a number of pages. OK, on the video you saw Mr. Saunders and the problems he had.

Senator NICKLES. What is the situation right now?

Ms. WALTERS. The situation right now is nothing. Nobody feels like that there is anything that they can possibly do and there is no help from the Oklahoma Department of Mines.

Senator NICKLES. Are these pictures——

Ms. WALTERS. Those pictures are personally mine of what has happened to myself.

Senator NICKLES. Is that right next to your home?

Ms. WALTERS. Right.

Senator NICKLES. Where is this?

Ms. WALTERS. In Wagoner County, 2½ miles south of Porter.

Senator NICKLES. So do you have——

Ms. WALTERS. I have fresh water now. The situation was taken care of and as I go on in here to state the water was finally taken out of the hole. We ran our water for a number of nights and days until we got the fresh water back which the man who drilled the wells for the coal company informed us that if they would go ahead and pump that pit out that our fresh water would come back and they informed us that they did not have the time nor the money to mess with us, the coal company did.

Senator NICKLES. Are they still producing coal down there?

Ms. WALTERS. No; they are reclaiming down in a small area which is about a quarter of a mile.

Senator NICKLES. You say this is in Wagoner County?

Ms. WALTERS. Yes.

Senator NICKLES. Western or eastern?

Ms. WALTERS. Southern Wagoner or western. Well, southwest.

Senator NICKLES. I appreciate your bringing that up. You are right, too. The real focus of this hearing was to learn primarily of the relationship between OSM and the Oklahoma Department of Mines and what can be done to get Oklahoma's primacy role back.

Your statement is that you think more should be done in both. I guess that was the——

Ms. WALTERS. Definitely. When an inspector tells you he is scared to death to come out because he is afraid of the coal company—then that really doesn't help me.

Senator NICKLES. I appreciate your coming, Mr. Haynes. I appreciate your coming from Fort Smith and Mr. Watts from Dallas, TX. To all our panelists, I appreciate your comments. I have also received a note Marcus Willey wanted to put something in the record. Is there anyone else in the audience that has some information that they would like to put in the record as well? We have one other person, is that all?

MEMBER OF THE AUDIENCE. I just wanted to add one thing.

Senator NICKLES. All right, just a second. To our panelists, I appreciate your input and your statements will be put into the record and also your cooperation and patience because for the most part, most of you have been here for over three hours. I appreciate that very much. Do you want these pictures back. I will make sure that I get those back. They also have your name on them.

Also do the Beams want these pictures back?

Mr. DANIEL BEAM. No, Senator; they are for you.

Senator NICKLES. To our panelists, we thank you very much. We have a couple of people that indicate, well, Mr. Willey, do you have a statement that you want to have inserted in the record. We will be happy to insert that into the record as well. We have somebody else that had a question or a comment they wanted to include.

MEMBER OF THE AUDIENCE. Senator Nickles, the blasting is going on in Porter and I am right just a little ways from the blasting over in that area. My house is all to pieces, all apart. I had it all repaired and now then it is open now, all the windows and everything, and I don't have but two outside doors and none of them will close. The dust and everything, my windows, I have those storm windows and they are off and they were in there way before they started blasting and I had my house repaired and now it is all back again. I don't know what to do. I had to take my rugs up and everything and my gas bill was \$95 a month in the wintertime.

Senator NICKLES. OK. I appreciate your comments. I want to apologize to anyone that came to this hearing that was expecting this hearing to be a public hearing on blasting damage or something. That was incorrectly put in the paper, not by this Senator. It was put in by a different organization that was not authorized by this Committee or this Senator to do so.

The purpose of this hearing was to investigate the relationship between OSM and Oklahoma Department of Mines and not really to get in that subject but I appreciate your comments. Again, this Senator had nothing to do with that. I noticed an ad in the paper that said, we are going to have a public hearing on blasting damage and that quite frankly wasn't the purpose of this hearing. Thank you very much.

I see somebody else had raised their hand and was this on the blast damage or something?

MEMBER OF THE AUDIENCE. Yes, Senator Nickles; I want to say that I live in Red Bird and the blasting is getting so furious and so furious until it is rocking the buildings over there and knocking our windows over there in Red Bird. It is quite a ways from there but we are having it. Everytime we have a blast I put it on my calendar and the time, whether it is 1 a.m. or 4 p.m., I put it on the calendar.

I was wondering if there was anything, that I was so sure that maybe there was something you could do that maybe could help us with this situation. It has knocked very expensive figurines down and break them and everything and it is just terrible.

Senator NICKLES. Well, I appreciate your coming. Again, it won't be part of this hearing but we might do something outside of the hearing.

Mr. Close, I appreciate the fact that you been with us. To all of our panelists, I am especially appreciative of Ms. Townley and I appreciate the fact that you stayed with us as well. We wish you well in your endeavor and look forward to working with you. And also Mr. Close, your department, hopefully we will make some progress.

I have several questions that came as a result of this hearing. I think you probably do as well. For your information there may be some other people that have some comments or some statements that they wish to be made as part of the record. We will keep the

record open for 2 weeks to complement it and also to give time for myself and possibly other Senators as to some additional questions to maybe fill some of the holes that came up as part of this testimony.

With that, I am going to thank all of you that did come from afar and spent quite a lot of your time in making this I think a very important and a valuable oversight hearing.

With that, the hearing is adjourned.

[Whereupon the hearing was adjourned.]

[Ranchers Coal, Inc., submitted the following:]

RANCHERS COAL, INC.
1330 East Steve Owens Blvd.
Miami, Oklahoma 74354
918-540-1595

The following is a chronology of the events that have taken place since the acquisition of Ranchers Coal from the previous owner, who was experiencing financial troubles.

January, 1983 through August, 1983 - A significant number of man-hours were devoted to evaluation and confirmation of assets and liabilities during this period. Included was a visit with the Oklahoma Department of Mines (ODOM) to ascertain Ranchers Coal, Inc. (RCI) outstanding reclamation liabilities and overall reputation with the ODOM's permitting office, as well as, the enforcement division. Their response was good to excellent - "One of the best in the state, no outstanding violations and/or penalties". Past experience had been very good with RCI only receiving 1 or 2 violations in the past one and a half years, both of which were minor.

August, 1983 - Purchase of RCI was completed - new experienced, professional management took over the operation and an injection of considerable capital was made. Permitting required 90 to 120 days to issue after submitted to ODOM. Bonding requirements were \$1,000 to \$1,800 per acre. Releases were granted for any undisturbed area at the rate of 100 percent. Sixty-five percent releases were normally granted after backfilling and contour re-establishment with a cover crop.

October, 1983 - Permit for RCI Mine # 4 was submitted to ODOM.

December, 1983 - Inspections of current mine site and all previously mined areas are conducted as usual. No serious violations are discovered.

During December the Office of Surface Mining (OSM) is conducting a hearing to determine if their presence is needed in Oklahoma.

January, 1984 - Bill Marlatt, inspector for the ODOM is fired and Lloyd McKinney writes 22 violations on RCI properties which had been in compliance 30 days earlier. Violations result in direct cost of over \$170,000; loss of production, tremendous number of man-hours, and time which would have been spent in permitting process are incalculable.

January, 1984 - Permit for RCI Mine # 5 submitted to ODOM. Due to NOV on surface and ground water monitoring, additional equipment and staff were added to sample 18 ponds daily as discharged with allowable parameter requirements far exceeding natural runoffs. 18 groundwater wells have to be monitored with average flows of 0.2 gpm which is not adequate water to even be a well.

February, 1984 - ODOM tries to place "CO" in effect at RCI Mine # 6 (Cherokee Pit), reason for closure - contract mining is not allowed - even though examples of contract mining have been going on for years.

March, 1984 - Permit for RCI Pit # 4 issued.

May, 1984 - OSM takes over the State Department of Mines. The immediate effect - confusion, permits stalled, bonding requirements increased, many man-hours spent going back over old permits, releases, etc.

October, 1984 - Permit for Pit # 5 issued - 9 months after being submitted. Due to the delay in permitting, coal blending and production plans were altered, causing equipment to set idle and a loss of coal sales.

November, 1984 - In order to obtain bonding, RCI is forced to sell 60% of the company. Bonding has become more and more difficult due to uncertainty of release, increase in dollars per acre, lack of definite permitting time table for on-going operation.

June, 1985 - RCI forced to contract mine in effort to continue operation while permitting new property. Interpretation of law is now to disallow any data for permitting or bond release purposes unless gathered

between the months of May through August, or when submitted, to say that initial bond was inadequate so rather than release bond, they will keep it to represent the 40% of what the bond should have been.

Summary - Ranchers Coal is a small independent coal corporation owned by 24 individual stockholders and managed by professionals educated and experienced in the mining field, but due to the over regulations of the industry by OSM and interaction with other federal agencies, the company cannot survive as an independent coal producer. The Oklahoma coal industry cannot be burdened with the same permitting and bonding requirements of states with thicker coal and still be competitive due to the low tonnage per acre mined in Oklahoma.

If you have any questions or wish to discuss the Oklahoma coal mining industry further, we at Ranchers Coal, Inc. welcome your interest.